109-281

285-329

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~239.~~ 84

THE STATE OF LOUISIANA, EX REL. FOLSOM BROTHERS, A FIRM COMPOSED OF GEORGE FOLSOM AND HENRY FOLSOM, PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 7447.

Supreme court of Louisiana. Filed March 3d, 1879.
(Signed) FRANK WALL,
D'y Clerk.

STATE OF LOUISIANA:

Third district court, parish of Orleans, Hon. F. A. Monroe, judge.

STATE OF LOUISIANA, EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521,

Robert Mott, esq., & Thos. J. Semmes, esq., att'ys for relator and appellee.

E. H. Farrar, esq., & E. Howard McCaleb, att'ys for respondent & appellant.

Returnable to the supreme court of Louisiana on the 1st Monday in March, 1879.

2 *Petition for mandamus.—Filed Dec. 16th, 1878.*

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521. 3d dist. court, Orleans.

To the honorable the judge of the third district court for the parish of Orleans:

The petition of the State of Louisiana, on the relation of Folsom Brothers, a commercial firm domiciled in New Orleans, composed of George Folsom, who resides in the State of Mississippi, at Magnolia, and of Henry Folsom, residing in the city and State of New York, with respect represents:

That on the 28th day of June, 1877, petitioners recovered a final judgment against the city of New Orleans, a municipal corporation of the State of Louisiana, in the suit No. 24751 in the third district court for the parish of Orleans, for the sum of twenty-six thousand eight hundred and fifty dollars, with interest and costs.

Petitioner further avers that Guilfoux and Lee recovered on the 15th June, 1874, a judgment against the city of New Orleans, in the proceeding No. 2561 on the docket of the late superior district court for the parish of Orleans, of which court this is the successor, for the sum of two
3 thousand dollars and costs, which they thereafter transferred to relators, who became subrogated to all their rights against said city. That after the two aforesaid judgments became final, and in compliance with the statutes of the State of Louisiana, duly certified copies of the petitions, answers, verdict, and final judgments rendered therein, with

the certificates of the clerks of said courts that the said judgments were final, were filed with the proper officer of the said city of New Orleans, with the view and intention of having the same registered according to the act No. 5 of the extra session of the legislature of the State of Louisiana, approved March 17th, 1870, and said two judgments were registered in the department of public accounts, the one in favor of Guilfoux & Lee, under date of January 15th, 1876, and the one in favor of relators, under date of July 15th, 1877.

That the said judgments should by law have been put upon the budget of taxes to be levied and collected by said city, and should have been paid wholly or in part out of the taxes so collected; and petitioner avers that the said judgments were, with other judgments against the city, put partially upon the budget, and taxes were, to some extent, levied and collected, and should have been applied to the payment and extinction of said judgments, but were not so applied; and relators have frequently
4 demanded payment of said judgments of the proper officers of said city without success, and no portion of said judgments has been paid to relators.

Petitioner further avers that there have been judgments obtained against said city to large amounts, which have been registered according to law prior to those of relators, to a large amount, and, as the said city pretends, to the amount of five hundred thousand dollars, registered prior to the aforesaid judgments of relators.

Now, petitioner avers that by law it was the duty of the proper officers of the city of New Orleans to place on the budget of taxes to be levied all the judgments against said city levied, registered according to law, but the fact is that the whole of said registered judgments were not placed upon the budget, and for those that were so placed, taxes were not levied for the purpose of paying the same according to their priority, and in fact said judgments were but partially put upon said budgets, and when money was collected under the levy of taxes to pay said judgments, it was not applied to the payment of said judgments, but to other purposes; that the said city of New Orleans, through its officers and administrators here-
5 inafter named, has refused to place all of said registered judgments upon the budget, and to levy and collect taxes to pay the same as required by law, although thereto specially requested by relators; that by the laws of Louisiana, relators cannot issue execution against the city of New Orleans on their aforesaid judgments; and they are remediless except through the levy of taxes for the payment thereof, and a refusal so to do by said administrators deprives relators of all remedy for the collection of said judgments, and is in violation of their vested rights and of the Constitution and laws of the United States.

That relators have amicably demanded that the mayor and administrators aforesaid should pay relators said judgments, and should place said judgments, and all the said registered judgments on the budget for 1879, and all succeeding years, in addition to the amount necessary to pay the expenses and other requirements of the said city, and to levy and collect taxes sufficient to pay said judgments, according to the priority of their registration, which has been refused.

A copy of said demand is hereto annexed and made part hereof.

Wherefore petitioner prays that the city of New Orleans be ordered to show cause, on a day to be fixed by the court for that purpose, why a
6 peremptory writ of mandamus should not issue, ordering and compelling said city of New Orleans, and its proper officers, viz: Isaac W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; I. D. Houston, administrator of improvements; E. R. Chevally, administrator of water works and public buildings; I. Henry Behan, administrator of commerce, Patrick Meallie, administrator of police, to place upon the budget for taxes for the year 1879, and all succeeding years, until the same be fully paid, all the judgments including those of relators, which have been registered according to law, in addition to the other taxes to be levied according to law, and to impose taxes in addition to all other taxes required for other expenses, to a sufficient amount to pay and satisfy the whole of said registered judgments, and for general relief.

(Signed) ROBERT MOTT,
" THOMAS J. SEMMES,
Attorneys of Relators.

Affidavit of George Folsom for writ of mandamus.—Filed 16th December, 1878.

Personally appeared George Folsom, one of the relators herein, who being sworn says, that the facts contained in the foregoing petition are true.

(Signed) GEO. FOLSOM.

7 Sworn to and subscribed before me at this city of New Orleans on the 13th day of December, 1878.

[SEAL.] (Signed) R. C. MOTT,
Notary Public in and for the Parish of Orleans, Louisiana.

Document annexed to and made part of petition.—Filed 16th December, 1878.

To the mayor & administrators of the city of New Orleans:

GENTLEMEN: I demand of you in your capacities as mayor and administrators that you place upon the budget for taxes for the year 1879, and all succeeding years until the same be fully paid, according to the provisions of the act No. 5 of the extra session of the legislature of Louisiana of 1870, approved March 17th, 1870, the judgment for twenty-six thousand eight hundred and fifty dollars, interest and costs, recovered by Folsom Bro's against the city of New Orleans in the suit No. 24751, on the docket of the third district court for the parish of Orleans, and also the judgment obtained by Guilfoux & Lee against the city of New Orleans for the sum of two thousand dollars and costs, in the suit No. 2561 on the docket of the late superior district court for the parish of Orleans, and that you also place on the budget of taxes to be levied and collected
8 for the year 1879, and all succeeding years until the same be paid, all the judgments registered according to the provisions of the act No. 5 of the extra session of 1870, approved March 17th, 1870, registered prior to the registration of the aforesaid judgment obtained by Folsom Bro's against the city of New Orleans; that is to say, those judgments

registered prior to the 15th July, 1877, and that you place all said judgments on said budget in a sum or sums sufficient to pay all of the same, in addition to the budget for the other taxes to be levied according to law, and thus provide and collect a fund to pay and satisfy the whole of said registered judgments according to law.

I make this demand for the purpose of compelling you to comply with the law, as preliminary to legal proceedings.

New Orleans, December 11th, 1878.

(Signed) ROBERT MOTT,
Att'y of Folsom Brothers.

Order for writ of mandamus.

Let a writ of mandamus issue in this case, as prayed for and according to law, commanding the mayor and administrators of the city of New Orleans to comply with the demand of the within petition, or show cause to the contrary on Friday, the 20th day of December, 1878, at 11 o'clock a. m.

New Orleans, December 16th, 1878.

(Signed) F. A. MONROE, *Judge.*

9 *Writ of mandamus served on the city of New Orleans, J. W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; J. D. Houston, administrator of improvements; E. R. Chevally, administrator of water works and public buildings; J. Henry Behan, administrator of commerce, and Patrick Meallie, administrator of police, all of the city of New Orleans.—Issued 16th December, 1868.*

STATE OF LOUISIANA:

Third district court for the parish of Orleans, the State of Louisiana.

STATE, EX. REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

3rd dist. court for the parish of Orleans.

To the city of New Orleans, J. W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; J. D. Houston, administrator of improvements; E. R. Chevally, administrator of water works & public buildings, and Patrick Meallie, administrator of police, all of the city of New Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana, and of the third district court for the parish of Orleans, to comply with the demand of the petition, a duly certified copy whereof accompanies
10 this writ, or show cause to the contrary, on Friday, the 20th day of December, 1878, at eleven o'clock a. m.

Witness the honorable F. A. Monroe, judge of our said court, this 16th

day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and third year of the Independence of the United States.

[SEAL.] (Signed) JOE GARIDEL,
Deputy Clerk.

Return on writ of mandamus.

Served on the city of New Orleans, J. W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; Patrick Meallie, administrator of police; J. Henry Behan, administrator of commerce; E. R. Chevally, administrator of water works and public buildings, and J. D. Houston, administrator of improvements, all of the city of New Orleans.

Filed, 17th December, 1878.

Received, December 16th, 1878, and on December 17th, 1878, served copy of within writs of mandamus and copy of petition on the city of New Orleans, through J. W. Patton, mayor, in person, and on J. W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; Patrick Meallie, administrator of police; J. Henry Behan, administrator of commerce; E. R. Chevally, administrator of water works and
11 public buildings; J. D. Houston, administrator of improvements, in person.

Returned same day.

(Signed) JAMES GLYNN,
Deputy Sheriff.

Answer of respondents.—Filed 20th Dec., 1878.

3rd dis't court for the parish of Orleans.

STATE, EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

And now come the Mayor and Administrators of the City of New Orleans, who for answer to the order herein issued upon them to show cause why they should not comply with the demand of the relators, say:

They deny all and singular the allegations in said petition contained, except in so far as the same may be hereinafter specially admitted.

They specially deny that there ever has been any division of funds set apart for the payment of relators, such as is alleged in the said petition.

They specially deny that they have refused the amicable demand of relators to have their judgments budgeted, for the reason that so short a time intervened between the making of said demand and the institution of this suit that defendants had no time to signify either their assent or dissent in the matter.

12 Respondents aver that they are honestly and earnestly endeavoring to administer and execute impartially all the laws that bear upon the performance of their duties, both with reference to the city and to its creditors, and that nothing would give them more pleasure than to find it consistent with their duty and within their power to comply with

the demand of relators, and for reason why it is not in their power to comply with said demand, they aver:

That there is no money in the city treasury out of which relators can or ought to be paid in whole or in part. That the power of the city to levy taxes is limited to one and one-half per cent. on the assessed value of property. That the assessed value of property in the city does not exceed $111,000,000.00. That the revenues for the year 1879, that will accrue to the city from all sources whatsoever will not be sufficient to pay the necessary current expenses of maintaining the existence of the city government, and that the alimony of the government is by its very nature a claim privileged upon the revenues, which must be provided for before any debts can be paid. That inasmuch as taxation up to the full limit allowed by law (the full amount of which respondents intend to impose) and all the other sources of revenue will not be sufficient to pay the necessary alimony of the city government, and, inasmuch as all appropriations in excess of the actual revenue of the city are prohibited by law, it is impossible for respondents to budget the judgments which relators seek to have budgeted, as the act of so doing would not only be in violation of law, but would be a vain and useless thing.

13

That if by any possible contingency there should remain a surplus in the hands of the city after paying the necessary alimony of the government, respondents propose to apply that surplus to satisfaction of the judgments registered against her in the order of their registry, and that more than this respondents cannot be expected to be compelled to do.

Wherefore they pray that the demand of relators be rejected with costs.

(Signed) E. HOWARD McCALEB,
City Attorney.

(Signed) E. H. FARRAR,
Of Counsel.

Continuance of cause.—Extract from the minutes of 20th December.

3rd dist. court for the parish of Orleans.

STATE, EX. REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

This cause, assigned for this day, was called up, counsel for both parties being present; and after hearing the pleadings, was ordered by the court to be continued to the 24th day of December, 1878, at eleven o'clock a. m.

14

Continuance of cause.—Extract from the minutes 24th December, 1878.

3rd dis't court for the parish of Orleans.

STATE, EX. REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

By order of court this case is continued to the 10th proximo, at eleven o'clock a. m.

Testimony and notes of evidence taken in open court on the 10th day of January, 1879.—Filed 10th January, 1879.

3rd dis't court for the parish of Orleans.

STATE, EX. REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

Appearances:
Mr. R. Mott, attorney for plaintiff.
E. Howard McCaleb, attorney for defendant.

Offered in evidence by Mr. Mott the notice served on the city, which is annexed to the petition, and it is admitted that it was served on December 11th, 1878.

Also offers in evidence the judgment in the case of Folsom Brothers vs. City of New Orleans, No. 24751 of the docket of this court.

Also the judgment in the case of Guilford & Lee vs. City of New
15 Orleans, recovered in the case No. 2561 of the docket of the late superior district court.

Mr. Mott also offers in evidence document marked A, with the endorsements thereon, and states as follows:

I instituted suit in the sixth district court, which I think is No. 9837, the record of which I now offer in evidence, entitled: "State of La., ex rel. Folsom Brothers, against City of New Orleans." While that suit was pending and coming on for trial I addressed to the then city attorney, B. F. Jonas, the following communication:

(Communication, marked A, read to the court.)

He having stated to me that he would produce on such a call any document I required of the city, I furnished this document to Mr. Jonas, and he returned it to me with the endorsements on the back, which is signed by him as city attorney, through N. T. N. Robinson, secretary, with the papers which I now offer in evidence, marked B, C, D, E, & F, as in answer to that claim I made.

The suit in the sixth district court was a mandamus for the purpose of compelling the city to budget and collect the taxes for the payment of the two judgments which are the sub.-matter of the present proceedings.

(Mr. McCaleb objects to the introduction of the documents in evidence, on the grounds that those documents are not properly authenticated; that he knows nothing whatever of their nature; that they are not properly
16 authenticated, and not admissible in evidence in their present form.)

By the COURT. Objection overruled on the grounds that it having been shown that the documents in question emanated from the defendant in this proceeding, no objection having been made on the ground of irrelevancy, the court considers it competent to offer them in evidence, as against them.

(To which ruling of the court counsel for defendant reserves a bill, and takes this bill of exception.)

Mr. Mott now offers in evidence the proceedings in the case No. 25495 of the docket of this court.

Mr. JOHN GLYNN, Jr., being sworn, says:

By Mr. McCALEB:

Q. What position do you occupy at the present time?

A. I am administrator of public accounts of the city of New Orleans.

Q. How long since you took possession of that office?

A. On the 18th of November last.

Q. Was that the day on which the present city administration went into possession of the city offices?

A. Yes, sir.

Q. Please state the amount of taxable property in the city of New Orleans.

A. One hundred and eleven million dollars, I think. I have not got the exact amount.

17 Document marked G shown witness, and is offered in evidence.

By Mr. MOTT. Counsel for defendant have offered in evidence document marked G in connection with the testimony of Mr. Glynn. The same was objected to by counsel for relator on the ground that it is not competent for the defendant to show by testimony, either oral or documentary, that the property of the city and the rate of taxation allowed by law be such as to prevent the levy of taxes for the payment of judgments obtained in favor of and belonging to relator; that the rights of the relator are vested, and it is not competent for the city, by sharing a less value of the property that that which the taxes will cover for the purpose of defeating the collections of the debt from the city when the remedy allowed by law at the time the judgments were obtained, because the right to call upon the city for the purpose of levying a tax for the payment of said judgments. The court overrules the objection on the ground that it goes more to the effect than to the admissibility of the evidence, the question after all to be determined being the power of the legislature to limit the rate of taxation when called in question under act providing the method of the satisfaction of judgments against the city.

Q. Is that list marked G correct?

18 A. Yes, sir, except the taxes of the New Orleans Gas Light Company; that is not included.

Q. Is it incomplete to that extent?

A. Yes, sir.

Q. This slip I hand you does contain the correct value of the taxable property as from the budget?

A. Yes, sir; as adopted last Tuesday week finally.

(Slip from the newspaper offered in evidence.)

Q. That is from the budget of receipts you have adopted for the ensuing year?

A. Yes, sir.

Q. Have you with you the budget of expenditure for that year?

A. I have a draft from the budget; it will come up for final adoption on Tuesday next; it is now pending; it has been acted upon favorably by the committee of the whole.

Document marked I offered in evidence, a copy to be produced.

(Counsel for relator makes the same objection as before to the admissions of all this evidence. The court's ruling being the same.)

Q. Have you a copy of the judgments rendered and registered in your department against the city of New Orleans?

A. Yes, sir.

Q. Is the list you have a correct list?

A. Yes, sir.

(List marked J offered in evidence, copy to be produced.)

Q. Has the council, in making their annual budget, estimated the
19 receipts for the year at the rate of ninety per cent. on the budget of the previous year?

A. Yes, sir; that is with ten per cent. struck off, as per requirements of the legislature.

Q. Are the amounts appropriated here and assessed absolutely necessary for the running of the government and paying the interest on the bonded debt?

A. Absolutely so.

Q. How stands the judgment appropriations or budgets of previous years?

A. It is overdrawn.

Q. To what extent?

A. I am investigating the matter now; I think to the extent of sixty thousand dollars.

Q. Is there any money in the city treasury to pay those judgments of relators, Folsom Brothers and Guilfoux?

A. No, sir; the amount of judgments is overdrawn for the years 1876, 1877, and 1878.

Q. At what rate have you levied taxation on taxable property?

A. One and a half per cent.

Q. The extreme limit under act of 1870?

A. Yes, sir.

Q. Will there be any surplus over and above that amount?

A. I cannot say at present.

Q. Taking from the estimated receipts of the previous years?

A. The previous years are overdrawn.

20 Q. Have the expenses been reduced in the different departments?

A. Yes, sir.

Q. Can you state to what rate?

A. It was reduced not only in the various departments, but in contracts which have some time to run; in order to make the budget of the expenses we were compelled to make a reduction of nearly twenty per cent., as well as under the contracts in the New Orleans Gas-Light Company, the fire department, and the Jefferson City Gas-Light Company; it was necessary to get a reduction in order to balance the budget of expenditures with the budget of receipts.

Q. These amounts or appropriations in this budget of expenses, are they absolutely necessary to pay the interest on the bonded debt and the expenses of the city?

A. Yes, sir; absolutely so.

By Mr. MOTT:

Q. Why did you appropriate ten thousand dollars to the payment of the judgments if the revenues derived by this one and a half per cent. is

not more than enough to pay the expenses of the city and the interest on the bonded debt?

A. We wanted to provide to the extent of our power something for account of judgments and carry through our administration. We got it by making those reductions in contracts, &c., and we thought it absolutely necessary to provide for judgments to some extent; we could not
21 go beyond that figure.

Q. I understood you to say that the revenue derivable from taxation, according to the amount that you are allowed to assess and collect, this one and a half per cent. upon the assessed value of the property is more than sufficient to pay the expenses of the city and the interest on the bonded debt. You now state that you have by management been enabled to reduce the expenses of the city to such an extent as to allow you to pay on judgments ten thousand dollars?

A. Yes, sir.

Q. How many judgments will that pay?

A. It will pay six, I think. The first judgments were for small amounts; the list of registered judgments will show.

Q. The third judgment on the list is ten thousand dollars?

A. That is not decided yet; it is simply at issue.

Q. I see on this list of registered jndgments figures in pencil; were they intended to be before the court also?

A. Those figures refer to some memoranda.

Q. Then the list is not an accurate list of the judgments registered at that time?

A. Yes, sir.

Q. Then the words and figures in pencil are intended as a portion of this statement?

A. Yes, sir.

22 Q. You say that this judgment on this list is not decided yet (for ten thousand dollars)?

A. There is some litigation connected with it. I will state that it has been almost impossible for me to familiarize myself with all those different things in the short time that I have been in office. The clerk can make some explanation about that.

Q. I see the seventh judgment of John Folwell is twelve thousand five hundred and twenty-four dollars and ninety cents; do you know anything about it?

A. No, sir; nothing special about the merits of the judgment.

Q. I understood you to say distinctly of your own knowledge that it requires the entire collection of all the taxes to be assessed for 1879 to pay the running expenses of the city and to provide ten thousand dollars for judgments?

A. Yes, sir; it can only be done by the collection of all the taxes assessed, less the ten per cent. provided by law; in other words, we could not very well have appropriated more than ten thousand dollars from the revenues of 1879 to provide for judgments without cutting down all the departments beyond a living rate.

Q. Or without going beyond one and a half per cent.?

A. Yes, sir.

Mr. CUMMERFORD being sworn and examined:

By Mr. McCALEB:

Q. What position do you fill?

23 (Mr. Mott objects on the same ground as before. Same ruling of the court.)

A. I am legal process clerk in the department of public accounts.

Q. How long have you filled that position?

A. About six years.

Q. Look at the statement I now hand you?

A. It is a statement showing the payment of judgments against the city of New Orleans from January 1st, 1875; how paid, whether in cash or scrip.

Q. How much has the city of New Orleans paid towards the extinguishment of judgments against the city?

A. There is $390,251.24 *dollars*, which includes $247,445.09 paid in cash, and $98,177.60 which was paid in scrip, including partly that amount which was extinguished by the issuance of water-works stock, and $39,600.00 funded in premium bonds. There was a judgment rendered in favor of Klein in the United States circuit court for $89,600.00 of matured railroad bonds in 1874. The city allowed him to use thirty-nine bonds after he had registered his judgment, and $5,688.50 was paid to Marchand in coupons, in which he reserved his rights as a coupon holder, that he had judgments rendered in his favor; they fell due and were cancelled by the city.

Q. How does the budget of expenditure now compare with those of previous years, is it less or greater; I am speaking of the whole

24 budget, the difference between the whole budget of 1878 and 1879, what is it?

A. There is a difference in the neighborhood of four hundred thousand dollars less this year, or in that neighborhood.

(Budget of expenditures, and the budget of receipts for the last year to be furnished.)

Document marked K offered in evidence.—Judgment in the case of Folsom Bros. vs. City of New Orleans, No. 3510 *of the late superior district court, being No.* 24751 *of the third district court for the parish of Orleans, to which court it was transferred by law, offered in evidence by counsel for plaintiff. Filed* 10*th January,* 1879.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

DAVID FOLSOM BROS. *vs.* CITY OF NEW ORLEANS. } No. 3510.

This case came on this day for trial by jury—Semmes & Mott for plaintiffs; A. C. Lewis for the City of New Orleans.

The following-named jurors were then empaneled, called, and sworn, to wit:

William Fernandez, foreman, François Poree, Joe Duch, Othella Remony, Wm. Maurice, Joe Adams, Daniel Janders, John Wesley, Arthur P. Navarre, John Davis, David Jones, Jean Marseille.

After hearing pleadings, evidence, and counsel, the jury received
25 the charge of the judge and then retired to deliberate. When, after deliberation, the jury returned into court, and through their foreman rendered the following sealed verdict, to wit: "We, the jurors, find a verdict in favor for plaintiff in the sum of fifteen thousand dollars, $15,000.00."

Whereupon, the court considering the verdict of the jury, the same was ordered to be recorded.

It is ordered, adjudged, and decreed that there be judgment in favor of the plaintiffs David, Henry, and George Folsom, composing the commercial firm of Messrs. Folsom Bros., and against the city of New Orleans, for the sum of fifteen thousand dollars ($15,000.00), with legal interest from judicial demand.

Judgment rendered April 9th, 1874, and signed April 20th, 1874.

(Signed) JACOB HAWKINS, *Judge.*

Judgment in the suit of J. Guilfoux & G. E. Lee vs. City of New Orleans, No. 2561 *of the late superior district court for the parish of Orleans, offered in evidence by counsel for pltaintiff on the trial of the cause No.* 25521 *of the 3rd district court.—Filed 10th January,* 1879.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

J. GUILFOUX & L. E. LEE
vs.
CITY OF NEW ORLEANS. } No 2561.

26 The jury case herein assigned for this day for trial came on; R. Shackelford and George W. Sadler for plaintiffs; A. C. Lewis for defendant.

After hearing pleadings, evidence, and counsel, and after receiving the the charge of the court, the jury retired to deliberate upon their verdict.

And after mature deliberation the jury returned into court with the following verdict:

"The jury in this case renders verdict for plaintiffs for two thousand dollars.

(Signed) "JOS. McELROY,
"*Foreman.*"

And the said jurors having all agreed that this verdict having been agreed to by them, the court ordered the same to be duly recorded.

In this case the court considering the verdict of the jury herein rendered and duly recorded, it is ordered, adjudged, and decreed that there be judgment in favor of the plaintiffs, J. Guilfoux and L. E. Lee, and against the City of New Orleans, for the sum of two thousand dollars with costs.

Judgment rendered June 15th, 1874.

Judgment signed July 3d, 1874.

(Signed) JACOB HAWKINS, *Judge.*

Document marked A, with endorsements thereon by B. F. Jonas, city
27 *attorney, offered in evidence by counsel for plaintiffs.—Filed 10th of January*, 1879.

6th dist. court for the parish of Orleans.

THE STATE OF LA., ON THE RELATION OF FOLSOM BROS., *vs.* THE CITY OF NEW ORLEANS. } No.

Mr. Jonas will please have prepared before the day of trial in the above-entitled case the following:

1st. A list of judgments registered previous to the 16th of July, 1877.

2d. A statement showing amount paid on judgments registered previous to 16th July, 1877, whether paid in cash, or from having been received on payment of taxes or otherwise.

3d. A statement showing amount of taxes collected by the city for payment of judgments in each year previous to 1st January, 1878.

4th. A statement showing amount of taxes collected in 1878, for the payment of judgments registered previous to that date.

5th. A statement showing the amount of money collected for the payment of judgments, which has not been applied to the purpose for which collected.

6th. A statement showing the proportion of each year's collection of taxes, applicable to the payment of the judgments, registered in the department of public accounts for each year previous to 1878.

(Signed) ROBERT MOTT,
Attorney of Relators.

Endorsement on the reverse of document A.

CITY ATTORNEY'S OFFICE, *March 22d*, 1878.

28 Respectfully referred to honorable J. G. Brown, administrator, with the request that the documents called for within be prepared for use in the suit of State, ex rel. Folsom Brothers, vs. City of New Orleans, No. 9837, sixth district court, fixed for Monday next, March 25th, 1878, and sent to this office.

(Signed) B. F. JONAS, *City Attorney.*
(Signed) N. T. N. ROBINSON, *Sec'ty.*

Document marked B.—Transfer of assignment of Guilfoux & Lee, in suit No. 2561, of the late superior district court, offered in evidence by counsel for plaintiffs.—Filed 10th January, 1879.

TRANSFER OR ASSIGNMENT.

NEW ORLEANS, 187 .

For value received I hereby transfer and assign to or order, all my right, title, and interest in and to the claim due me by the city of New Orleans, amounting to two thousand dollars, in conformity with ordinance No. 2066, administration series, as described below.

DESCRIPTION OF CLAIM.—"For judgment rendered in favor of Guilfoux & Lee (Folsom Brothers subrogees) vs. City of New Orleans, in suit No. 2561, superior district court, with costs," $2,000.00. Deposited in the department of public accounts for registration 187 .

(Endorsed across face of document "B" in red ink:) "Registered in department of public accounts as No. 270, fo. 172, book 2, under
29 date of January 15th, 1876."
(Signed) W. J. C.

Document C, offered in evidence by counsel for plaintiff.—Statement of registered judgments unpaid to July 16th, 1877, against the city of New Orleans.—Filed 10th January, 1879.

Statement showing judgments against the city of New Orleans registered in the office of the department of public accounts to July 16th, 1877, and unpaid, together with date and amount of each judgment, not including costs and interest.

Names of plaintiffs.	Date of regist'n.	Am't of judg't.	Remarks.
S. D. Moody	M'ch 29, '71	250 00	
Henry Wenger	" 20, '73	143 50	Balance.
P. S. Nugent	Jan'y 20, '75	4,409 43	Balance.
Carondelet Canal & Navigation Co.	Feb'y 5, '75	12,500 00	
Henry Henchert	" 20, "	493 64	
Sam'l Logan	" 26, "	1,600 00	
F. Schroeder	M'ch 23, "	83 00	
Jacob Christian	May 6, "	500 00	
J. N. Folwell	June 11, "	12,524 96	
J. P. Macheca & S. Oteri	July 15, "	120 00	
Thos. Bullen	" " "	150 00	
Jno. Fitzpatrick	Aug. 2, "	4,815 86	
Jno. H. Keller	" " "	5,466 00	
Jno. Maylan	Dec. 16, "	887 50	
P. Guilford & C. E. Lee	Jan'y 15, '76	2,000 00	
Nicholas Comrell	" 26, "	9,862 29	Balance.
30 Miller, Stoutruberg & Pickham	M'ch 8, '76	2,500 00	
N. B. Hutton	" 17, "	38 00	
R. B. Bagine	" " "	34 50	
Rebecca W. Wolf	May 13, "	13,000 00	
Rufus Waples	July 7, "	2,820 00	
Lawrence Casey	" 8, "	58 37	
John Klein	Aug. 21, "	50,000 00	
Patter & Andrews	Sept. 13, "	901 68	
Jos. Alexander	Nov. 8, "	138 00	
Walter Bailey & J. E. Aldrich	Nov. 20, "	1,200 00	
Alfred Marchand	Dec. 3, "	770 00	
Do. do.	" 4, "	3,392 93	
Do. do.	" 4, "	1,015 00	
Chas. Rathbone	" 4, "	3,090 00	
Emma B. Jones	" 4, "	1,382 50	
Thos. Pickles	" 7, "	19,454 21	
Mrs. Myra Clark Gaines	" 30, "	57,350 00	Balance.
F. J. Herron	May 4, '77	2,420 00	
J. O. Landry	July 7, '77	700 00	
Folsom Bros	July 15, '77	26,858 00	
		242,929 37	
Add for costs and accrued interest, estimated.		48,000 00	
Total		$290,929 37	

E. & O. E.

DEPARTMENT OF PUBLIC ACCOUNTS,
New Orleans, March 23d, 1878.

31 *Document marked D, offered in evidence by counsel for plaintiffs.—Statement showing total receipts from taxes and licenses and expenditures of the city of New Orleans for the years* 1875 *to* 1877 *inclusive, and from January* 1*st to March* 20*th*, 1878.—*Filed* 10*th January*, 1879.

RECEIPTS.

1875.		
Total tax collections	2,577,061 00	
Licenses	358,259 00	
		$2,935,320 00
1876.		
Total tax collections	1,454,655 10	
Licenses	253,846 00	
		$1,708,501 10
1877.		
Total tax collections	1,352,606 46	
Licenses	293,783 75	
		$1,646,390 21
1878.		
Total tax collections	668,760 05	
Licenses	231,763 50	
		$900,523 55

EXPENDITURES.

1875.		
Interest on bonded debt	1,141,997 80	
Met. police tax	504,720 95	
New Orleans Park	127,472 71	
School tax	258,605 21	
City expense	544,264 33	
		2,577,061 00
City expense		358,259 00
		$2,935,320 00

32

1876.		
Premium bond tax	250,140 60	
Met. police tax	403,921 64	
School tax	242,421 50	
City expense	558,171 36	
		1,454,655 10
City expense		253,846 00
		$1,708,501 10

1877.		
Premium bond tax	356,587 79	
Crescent city police	267,874 58	
School	180,347 67	
City expense	547,796 42	
		1,352,606 46
City expense		293,783 75
		$1,646,390 21
1878.		
Premium bond tax	203,736 16	
City expense	372,044 96	
School	92,978 93	
		668,760 05
City expense		231,763 50
		$900,523 55

E. & O. E.

DEPT. PUBLIC ACCOUNTS,
New Orleans, March 23d, 1878.

Document marked E, offered in evidence by counsel for plaintiffs.—Statement showing payments on account registered jndgments against the city of New Orleans from January 1st, 1875, to March 20th, 1878.—Filed 10th January, 1879.

Statement showing payments on account of registered judgments by the city of New Orleans from January 1st, 1875, to March 20th,
33 1878, date of registration, of judgment and payment; also how paid, whether in cash or in payment of taxes.

Name of plaintiff: M. A. Bowman et als.; registered May 31st, 1875; amount paid, $7,370.00, July 1st, 1875, for taxes.

Thomas Lynne; registered June 25th, 1874; paid April 1st, 1875, $7,608.69, cash by mandamus.

P. S. Nugent; registered January 20th, 1875; paid August 21st, 1875, $478.00 for taxes on %.

David Wagner; registered March 2d, 1875; paid October 7th, 1875, $1,650.00 cash, compromised.

John Coleman; registered June 24th, 1874; paid July 20th, 1875, $3,000.00 for taxes.

P. Déjan, jr.; registered June 11th, 1875; paid October 28th, 1875, $500.00 for taxes.

B. Roubillac; registered March 25th, 1874; paid November 19th, 1875, $187.66 for taxes.

P. S. Nugent; registered January 20th, 1875; paid November 2nd, 1875, $593.59 for taxes on %.

L. Le Gardeur, jr.; registered April 14th, 1874; paid December 1st, 1875, $98.99 for taxes.

A. Pilot, jr.; registered April 14th, 1874; paid December 1st, 1875, $98.99 for taxes.

Henry Wenger; registered March 20, '73; paid April 5th, 1876, $187.48 cash on %.

J. J. O'Hara; registered March 22d, '75; paid June 1st, 1876, $95.09 for taxes.

Amos Morrison; registered November 5th, '75; paid January 27th, 1876, $402.02 for taxes.

Nicholas Connell; registered January 26, '76; paid November 29th, 1876, $9,001.64 for taxes on %.

B. Campbell; registered March 17th, 1876; paid June 1st, 1876, $34.45 for taxes.

34 C. B. Fish; registered January 16th, 1876; paid June 1st, 1876, $416.24 for taxes.

J. M. Brabazon; registered Feb'y 10, '76; paid June 8th, 1876, $914.50 for taxes.

E. V. Leclerc; registered M'ch 17, '76; paid July 6th, 1876, $112.50.

Mrs. Myra Clark Gaines; registered Dec. 30, '76; paid July 1st, 1877, $100,000.00 cash on % borrowed.

E. W. Huntington; registered June 12, '74; paid February 2d, 1878, $500.00 cash.

Adolph Schreiber; registered Dec. 23, '74; paid February 6th, 1878, $500.00 cash, compromised.

Total, $133,749.84. E. & O. E.

DEPARTMENT PUBLIC ACCOUNTS,
New Orleans, March 23d, 1878.

Document marked "F," offered in evidence by counsel for plaintiffs.—Filed 10th January, 1879.

TRANSFER OR ASSIGNMENT.

NEW ORLEANS, , 187 .

For value received I hereby transfer and assign to or order, all my right, title, and interest in and to the claim due me by the city of New Orleans, amounting to dollars, in conformity with ordinance No. 2066, administration series, as described below.

DESCRIPTION OF CLAIM.—"For judgment rendered in favor of Folsom Brothers *vs.* City of New Orleans," in suit No. 3510 of the late
35 superior district court, and now number 24751 of the docket of the third district court, $26,858.00, bearing 5 % interest per annum from May 16th, 1873, and costs." Deposited in the department of public accounts for registration, 1878.

(Endorsed across the face of document:) F in red ink.

Registered in department of public accounts as No. 296, fo. 14, book 3, under date of July 15th, 1877.

(Signed) W. I. C.

11169——2

Document marked G, offered in evidence by counsel for plaintiff, showing the amount of taxable property in the city of New Orleans. Filed 10th January, 1879.

OBJECTS OF TAXATION.

1. Cash value of all lands and lots of ground owned or claimed by any person or corporation, whether patented or not, including in the assessment thereof all houses, machinery, fixtures, and improvements of any kind thereon, or appertaining thereto—see section 1, paragraph 1, act 8, extra session 1878—$88,666,560.

2. Cash value of all horses, mares, geldings, mules, jacks, jennies, all meat cattle, all sheep, hogs, and goats—see section 1, paragraph 2, act 8, extra session 1878—$585,055.

36 3. Cash value of all carriages or vehicles, whether with two or four wheels, kept for pleasure, use, or hire—see section 1, paragraph 3, act 8, extra session 1878—$473,585.

4. Cash value of shares of stock or interest in steamboats, ships, schooners, brigs, and all other water craft, whether at home or abroad—see section 1, paragraph 4, act 8, extra session 1878—$231,502.

5. Cash value of all money loaned or in possession—see section 1, paragraph 5, act 8, extra session 1878—$21,850.

6. Cash value of all capital invested or employed each year in trade, traffic, merchandise, or any kind of commerce, or other business, and all investments of values of any kind, except the capital stock of banks and banking associations, whose shares are assessed in the hands of the shareholders, and all other investments and values not otherwise assessed, or specially exempted by law—see section 1, paragraph 6, act 8, extra session 1878—$8,244,107.

7. The property of whatever kind of all corporations, over and above their capital stock, and all money and funds held by such corporation in trust or on deposit for persons or corporations, and used in trade or commerce for the benefit of such persons or corporations; provided, this does not apply to deposits made in banks subject to checks—see section 1, paragraph 7, act 8, extra session 1878—$369,948.57.

37 8. Number of shares of each stockholder in all banks or banking associations in this State. Value of each share. Total value of shares of stock in said associations after deducting from capital stock all property otherwise assessed or exempt from taxation—see section 1, paragraph 8, act 8, extra session, 1878—$1,982,486.50.

9. Household goods in excess of two hundred and fifty dollars, silver plate, jewelry, works of art, libraries, and pictures, except family portraits—see section 1, paragraph 9, act 8, extra session, 1878—$1,697,140.

10. The excess of all annuities, salaries, and incomes over one thousand dollars, derived from any source except from property taxed—see section 1, paragraph 10, act 8, extra session, 1878—$1,041,811.

11. All funds on deposit in the hands or in control of receivers or officers of courts—see section 1, paragraph 11, act 8, extra session, 1878.

12. Cash value of road-bed and rolling stock of railroads assessed at the rate per mile fixed by the auditor of public accounts, apportioned according to the number of miles in each parish—see section 1, paragraph 12, act 8, extra session, 1878—$187,045.

13. Cash value of the capital stock of all corporations doing business in this State, and not invested in property otherwise assessed or exempt from taxation—see section 1, paragraph 13, act 8, extra session, 1878—$5,392,171.

38 Total amount of the assessment of all taxable property comprised in the preceding thirteen (13) columns, being the objects of taxation enumerated in section 1, of act 8, extra session, 1878. Said objects of taxation are liable to a tax of 13 mills described in the preceeding thirteen (13) columns, $108,893,261.07.

Document marked I, offered in evidence by counsel for respondent, being an ordinance adopting an estimate of the receipts for revenues of the city of New Orleans for the year 1879.—*Filed* 10*th January*, 1879.

MAYORALTY OF NEW ORLEANS,
City Hall, December 26*th*, 1878.

(No. 4824. Administration series.)

An ordinance adopting an estimate of the receipts or revenues of the city of New Orleans for the year 1879.

Be it ordained by the council of the city of New Orleans, that the following estimate of the receipts or revenues of the city of New Orleans for the year 1879 be, and the same is hereby, adopted:

Tax of one and one-half per cent. on the valuation of real estate and personal property as per assessment rolls, total $111,226,433.07		$1,668,396
Licenses		275,000
Markets	$200,000	
Less amount due Louisiana Nat'l Bank	83,000	
		117,000
39 Wharves & landings		35,090
Bills receivable		11,470
Interest, printing, & law charges		20,000
Fines and fees		15,000
Ground rents		2,500
Cemeteries		2,000
Sugar sheds		5,000
Pound fees		1,000
Miscellaneous		25,000
Total		$2,177,366
Less ten per cent. in conformity with act No. 68 of 1877		217,736
Total		$1,959,630

Adopted by the council of the city of New Orleans, December 24th, 1878. Yeas, Behan, Chevalley, Glynn, Houston, Marks, Mealley.

ALF. H. ISAACSON,
Mayor Ad Interim.

A true copy.

ROBERT C. WOOD, *Secretary.*

Document marked ———, being the copy of an ordinance adopting an estimate of expenditures of the city of New Orleans for the year 1879, *offered in evidence by counsel for respondent.—Filed 25th January,* 1879.

CITY ORDINANCES—OFFICIAL.

MAYORALTY OF NEW ORLEANS,
City Hall, January 15th, 1879.

40 (No. 4857.—Administration series.)

An ordinance adopting an estimate of the expenditures of the city of New Orleans for the year 1879.

Be it ordained by the council of the city of New Orleans that the following estimate of expenditures (including police and schools) for the year 1879, be and the same is hereby adopted.

Department of improvements:		
Administrator's office, salaries and expenses	$4,500	
Streets, wages, &c	175,500	
Streets, repairs, &c	45,000	
Streets, bridges, crossings & wings	40,000	
Drainage machines	25,000	
Drainage, canals and levees	5,000	
Canal bridges, repairs, etc	5,000	
		$300,000
Department of commerce:		
Administrator's office, salaries and expenses	3,300	
Wharves & landings	12,000	
Markets	9,400	
Draw-bridges	7,300	
		$32,000
Department of water-works and public buildings:		
Administrator's office, salaries and expenses	3,500	
Court-houses, salaries & repairs	5,100	
Aged, infirm, & indigent	5,000	
Repairs, public buildings	19,000	
City-hall building, repairs, etc	2,500	
41 Public sinks "contract"	3,000	
Insane asylum, salaries and expenses	19,500	
Small-pox hospital, salary of visiting physician	5,000	
		$62,600
Department of police:		
Administrator's office, salaries and expenses	4,300	
Public squares, salaries & expenses	6,000	
Public pounds, salaries & rents	4,200	
Workhouse, salaries	1,640	
Boys' House of Refuge, salaries, provisions, etc	15,660	
Cost removal sick and dead, salaries, etc	5,000	
Cemeteries, repairs, etc	1,000	
Conveying prisoners, forage, etc	700	
		$38,500

Department of assessments:

Adminstrator's office, salaries and expenses	4,000	
Board of assessors, salaries and expenses	11,000	
		$15,000

Department of finance:

Salaries and expenses	22,000	
		$22,000

Department of public accounts:

Salaries and expenses		$14,000

Surveyor's office:

Salaries and expenses	19,000	
Dredge-boats	5,000	
		$24,000

42 Tax mortgage registers:

Salaries and expenses	$4,500

Mayor's office:

Salaries and expenses	$5,000

City-hall building:

Salaries of city librarian, keeper of archives, janiter, and porters, and classification of the records of the district courts	$7,500

City council:

Salaries and expenses	$3,500

City attorney's department:

Salaries and expenses	$10,800

Public printing:

Proceedings of council, promulgation of ordinances, reports, advertisements, and tax lists	$4,500

Tax bills, etc:

Printing tax, legders, bills, etc, and making tax bills	$7,000

Mayor and administrators:

Salaries	$49,500

Board of health:

Salaries, sanitary inspectors and police officers	$10,000

Lighting city:

Contracts with New Orleans and Jefferson City Gas Light Companies	113,000	
Contracts for litghing with oil	21,000	
		$134,000

Fire departments:

Firemen's charitable association for city	120,000	
Firemen's charitable association for fifth dirsrict	9,600	

43	Firemen's Charitable Association, sixth district		14,400	
	Firemen's Charitable Association, seventh district		6,400	
				$150,400
	Criminal justice:			
	Superior criminal court		9,500	
	First district court		6,500	
	Criminal, sheriff, parish prison, and court fees		50,000	
	District attorney, salary		5,000	
	Jury commissioners, salaries		1,800	
	Recorders' courts, justices of the peace, and constables		30,000	
	Rents of courts and police stations		7,800	
				$110,600
	Miscellaneous:			
	Support of orphans		42,000	
	Law charges		20,000	
	Coroners' salaries		12,000	
	Recording deaths		1,000	
	Improvements to fire-alarm telegraph		8,000	
	Judgments		10,000	
	Interest and redemption	$598,750		
	Less cash balance to credit of fund and amount estimated as collectible on unpaid taxes of 1876, 1877, and 1878	273,750		
			325,000	
	City park		84,040	
	Police department		250,000	
	Public schools		200,000	
				$952,040
44	Contingent			2,190
	Total			1,959,630

Adopted by the council of the city of New Orleans January 14th, 1879.
Yeas, Behan, Chevalley, Glynn, Houston, Isaacson, Marks, Mealy.

J. W. PATTON, *Mayor.*

A true copy:

ROBERT C. WOOD, *Secretary.*

Document K, offered in evidence by counsel for defendant.—Statement showing payments on account of judgments by the city of New Orleans from January 1st, 1875.—Filed 10th January, 1879.

Statement showing payments on account of judgments by city of New Orleans from January 1st, 1875, and how paid; whether in cash or scrip, and when paid.

Name of plaintiff: Henry Wenger; registered No. 213; folio 39; date of registry, March 20th, 1873 amount paid $337.48. Paid in cash $337.48.

When paid, $187.48, paid April 5th, 1876, & $150.00 paid April 17th, 1878.

Name of plaintiff: William Cullinan; registered No. 211; folio 36; date of registry, June 23d, 1873; amount paid $95.09. Paid in cash $95.09. When paid, June 1st, 1876.

Commissioners of the New Orleans park registered No. 221, folio 54, registered July 1st, 1874; amount paid in cash $90,002.83.

45 B. Roubilland, plaintiff, A. Jardet, transferree; registered No. 228, folio 64, M'ch 25th, 1874; paid in scrip December 2nd, 1875, $187.65.

A. Pitot, jr., plaintiff, Henry Bier, transferree; registered No. 230, folio 66, April 14th, 1874; paid in scrip December 1st, 1875, $98.99.

L. Le Gardeur, jr., plaintiff, Henry Bier, transferree; registered No. 231, folio 67, April 14th, 1874; paid in scrip December 1st, 1875, $98.99.

E. W. Huntington, plaintiff; registered No. 234, folio 69, June 12th, 1874; paid in cash February 2d, 1878, $500.00.

John Coleman, plaintiff, E. Conery, jr., transferree; registered No. 235, folio 70, June 24th, 1874; paid in scrip July 20th, 1875, $3,000.00. Amount judgment, $3,934.87; compromised for $3,000.00.

Thomas Lynne, plaintiff; registered No. 236, folio 71, June 25th, 1874; paid in cash various dates in 1875, $7,608.69.

A. Schreiber, plaintiff, Wm. Klein & Co., transferree; registered No. 241, folio 89, December 23d, 1874; paid in cash February 6th, 1878, $500.00; judgment $696.00; compromised for $500.00.

P. S. Nugent, plaintiff, various transferrees; registered No. 242, folio 99, January 20th, 1875; paid in cash March 28th, 1878, $1,000.00; paid in cash various dates, $1,071.59; paid in cash June 22d, '78, $6,908.05.

David Magner, plaintiff, Richard Lloyd & Fellows, transferree; registered No. 247, folio 121, March 20th, 1875; paid in cash Octo-

46 ber 6th, 1875, $1,650.00. (Judgment, $5,000.00; compromised for $1,650.00.)

M. A. Bowman et als., plaintiffs, various transferrees; registered No. 251, folio 133, May 31st, 1875; paid in scrip at various dates in 1875, $7,370.00.

I. Déjean, jr., plaintiff, E. H. Levy, transferree; registered No. 253, folio 142, July 1st, 1875; paid in scrip October 27th, 1875, $500.00.

Amos Morrison, plaintiff, E. Stern, transferree; registered No. 258, folio 159, November 5th, 1875; paid in scrip June 8th, 1876, $402.05.

C. B. Fish, plaintiff, E. Stern, transferree; registered No. 271, folio 175, January 16th, 1876; paid in scrip June 8th, 1876, $416.25.

Nicholas Connell, plaintiff, A. Jardet and Jno. Klein & Co., transferrees; registered No. 272, folio 178, January 26th, 1876; amount paid in scrip at various dates on %, $9,001.64.

J. M. Brabazan, plaintiff, A. Jardet and W. W. Handlin, transferrees; registered No. 273, folio 184, February 10th, 1876; paid in scrip at various dates, $914.50.

E. V. Leclerc, plaintiff, A. Jardet, transferree; registered 277, folio 202, M'ch 17th, 1876; paid in scrip July 6th, 1876, $112.50.

Benj. Campbell, plaintiff; registered No. 278, folio 204, March 17th, 1876; paid in scrip July 6th, 1876, $34.45.

W. R. Fish, plaintiff; registered No. 279, folio 206, May 8th, 1876; amount paid in scrip at various dates, $1,395.09.

John Klein, plaintiff; registered No. 283, folio 224, August 21st,
47 1876; amount paid, $59,430.16; $2,000.00, about, paid in cash; $18,430.16 at various dates paid in scrip, exchanged for water-works stock, railroad bonds funded in premium bonds.

A. Marchand, plaintiff; registered No. 287, folio 238, December 3d, 1876; amount paid various dates, $3,133.00; coupons paid by commissioners of consolidated debt.

A. Marchand, plaintiff; registered No. 288, folio 241, December 3d, 1876; coupons paid by commissioners of consolidated debt, $2,555.50.

Mrs. Gaines, plaintiff; registered No. 293, folio 258, December 30th, 1876; amount paid in cash at various times, $107,059.00.

Union Insurance Company, plaintiff; registered No. 304, 323, folios 61, 134, April 15th, 1878; paid in scrip, June 4th, 1878, $24,305.93. (Exchanged for water-works stock.)

Leon Bertoli, plaintiff, H. Bier, transferree; registered No. 324, folio 136, April 25th, 1878; paid in scrip, June 4th, 1878, $759.26.

Mrs. F. Mandell, plaintiff, W. R. Forman, transferree; folio 151. Amount paid in scrip May 18th, 1878, $3,593.25. (Exchanged for water-works stocks.)

F. L. Fernandez, plaintiff; folio 168; amount paid in scrip, June 4th, 1878, $1,091.45.

Leopold Hauser, plaintiff, I. Strauss, transferree; folio 180; paid in scrip, June 15th, 1878, $290.00.

W. E. Murphy, plaintiff; folio 184; paid in scrip, June 3d, 1878, $306.00. (Exchanged for water-work stock.)

48 W. S. Peterkin, plaintiff; not registered; amount paid in cash, August 2, '75 (U. S. court), $5,769.45.

I. D. Hill *vs.* Board of Drainage Commissioners; not registered; paid in scrip, May 31st, '75, $2,280.00.

Hebrew Society, plaintiffs; not registered; amount paid in cash, November 29th, 1876, $500.00.

Imperial Fire Insurance Company, plaintiff; not registered; paid in cash, Aug. 3, '77, $500.00; paid in cash, April 25, '78, $225.00.

Canal Carondelet Navigation Company, plaintiffs; registered No. 242½, folio 100, February 28th, 1864; amount paid in cash, June 10th, 1878, $21,989.50.

A. C. Lewis, plaintiff, H. Bier, transferree; registered No. 300, folio 32, November 3d, 1877; paid in scrip, October 23d, 1878. (Exchanged for water-works stock.)

Robert H. Bartley, plaintiff; registered No. 301, folio 35, February 11th, 1878; paid in scrip, August 2d, 1878, $1.907.85. (Exchanged for water-works stock.)

Cora A. Heunen, plaintiff; registered No. 342, folio 194, June 7th, 1878; paid in scrip, Aug. 2, '78, $80.45. (Exchanged for water-works stock.)

Labatt & Buisson, plaintiffs; registered at various dates; amount paid at various times in scrip, $18,300.00.

Total judgments paid, $390,251.24, as follows:

49	Cash	$247,445 09	
	Scrip	98,117 65	
	Klein funded in premium bonds	39,000 00	
	Marchand coupon judgments paid	5,688 50	
	Total amount judgments paid		390,251 24

Document marked ———, being an ordinance adopting an estimate of receipts or revenues of the City of New Orleans for the year 1878, *offered in evidence by counsel for respondents.—Filed* 10*th January,* 1879.

MAYORALITY OF NEW ORLEANS.

City Hall, December 28*th,* 1877.

(No. 4276—Administration series.)

An ordinance adopting an estimate of receipts or revenues of the City of New Orleans for the year 1878.

Be it ordained by the council of the City of New Orleans, That the following estimate of the receipts or revenues of the City of New Orleans for the year 1878 be, and the same is hereby, adopted:

Tax, one and one-half per cent on the valuation of real estate and personal property, as per assessment rolls, on a total of $111,123,695			$1,666,855
Licenses			300,000
Market revenues		$250,000	
Less due Louisiana National Bank		126,000	
			124,000
	Water-works		150,000
50	Wharves and landings		35,000
	Bills receivable		10,500
Law charges, &c			30,000
Fines and fees			30,000
City railroads			5,000
Ground rents			5,000
Pound fees			1,000
Cemeteries			5,000
Sugar-sheds			5,000
From State of Louisiana: claims for repairing levees, & cash advanced insane asylum, Jackson, La			155,000
Miscellaneous			75,000
Total			2,597,355
Reduced 10 per cent. as per act No. 68, approved April 14th, 1877			259,735
Total			2,338,620

Adopted by the council of the City of New Orleans, December 26th, 1877. Yeas: Brown, Cavanac, Denis, Diamond, McCaffrey, Rengstorff.

(Signed) ED. PILLSBURY, *Mayor.*

A true copy.

(Signed) THOS. G. RAPIER, *Secretary.*

Document marked———being an estimate of expenditures of the City
51 *of New Orleans for the year* 1878, *offered in evidence by counsel for respondents.—Filed* 10*th January,* 1879.

MAYORALITY OF NEW ORLEANS.
City Hall, January 9th, 1878.

(No. 4300—Administration series.)

An ordinance adopting an estimate of expenditures of the City of New Orleans for the year 1878.

Be it ordained by the council of the city of New Orleans that the following estimate of expenditures (including police and schools) for the year 1878 be, and is hereby, adopted:

Departments of improvements:		
Contracts for draining-machines, cleaning and repairing streets, etc.....	192,000	
Drainage-canals, machinery, new works, etc., salaries & office expenses.....	75,000	
		$267,000
Surveyor's department:		
Salaries and office expenses.....		$20,000
Department of police:		
Administrator's office, salaries and expenses.....	4,500	
Public squares, salaries and wages.....	5,000	
Public pounds, salaries and rents.....	5,100	
Work-house building, salaries, forage, etc.....	5,000	
Boys' house of refuge, salaries, provisions, etc..	13,500	
Cost of removal sick and dead.....	2,500	
Public cemeteries, repairs, etc.....	1,500	
		$37,100
52 Department of commerce:		
Administrator's office, salaries and expenses, wharves and markets.....	26,500	
Canals and drawbridges, salaries and expenses	7,000	
		$33,500
Department of water-works and public buildings:		
Administrator's office, salaries and expenses.....	3,000	
Water-works, pipes, machinery, &c.....	26,000	

Water-works, salaries and wages	36,000	
Court-houses, salaries & repairs	6,000	
Public buildings (not enumerated), repairs, &c.	10,000	
Insane asylum, salaries and provisions	18,000	
House of aged and infirm, salaries and provisions	4,500	
Public sinks, contract	3,000	
City Hall building, repairs, etc	6,000	
Support of small-pox patients and salary of visiting physician	6,500	
		$119,000
Department of finance:		
Salaries & office expenses	22,000	
		$22,000
Department of public accounts:		
Salaries & office expenses		15,000
Department of assessments:		
Salaries & office expenses		18,000
53 Tax mortgage registers:		
Salaries and stationery		$4,500
Mayor's office:		
Salaries and expenses		5,000
City Hall Building:		
Salaries, librarian, keeper of archives, janitor and porter	6,000	6,000
City council:		
Salaries and stationery		3,000
City attorney's department:		
Salaries and office expenses		11,400
Printing and cost of tax bills, ledgers, registers, &c		12,000
Mayor & administrators		49,500
Lighting city:		
Contracts with New Orleans and Jefferson City Gas-Light Companies	121,000	
Contract for lighting with oil	22,000	
		$143,000
Fire department:		
Firemen's Charitable Association for city	140,000	
Firemen's Charitable Association fifth district	12,000	
Firemen's Charitable Association, sixth district	18,000	

Firemen's Charitable Association, seventh district	8,000	
Board of underwriters for Babcock machines	6,000	
		$184,000
Board of health		15,000
Criminal justice:		
Superior criminal court	9,000	
First district court	6,500	
Criminal sheriff, parish prison, and court fees	75,000	
District attorney, salary	5,000	
Jury commissioners, salaries	1,200	
Recorders and justices of the peace courts and constables	30,000	
Black-maria	1,500	
Rents of courts and police stations	7,800	
		$136,000
Miscellaneous:		
Support of orphans	39,504	
Law charges	20,000	
Coroners' salaries, etc	13,000	
Recording deaths	1,000	
Judgments	20,000	
Interest and redemption	509,500	
City park	82,000	
Police department	325,000	
Public schools	225,000	
		$1,235,004
Total		$2,336,004
Contingen'		2,616
Total		$2,338,620

Adopted by the council of the city of New Orleans, January 2d, 1878; Yeas: Brown, Cavanac, Denis, Diamond, Rugstorff, 5; nays, McCaffrey, 1.

(Signed) ED. PILSBURY, *Mayor.*

A true copy.

(Signed) THOS. G. RAPIER,
Secretary.

Continuance of cause.—Extract from the minutes, 10th January, 1879.

Third district court for the parish of Orleans.

STATE, EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

This case came on for trial—present, R. Mott for relators; E. H.

McCaleb, city attorney, for respondents—when, after hearing pleadings and part of the evidence, the court continued this matter to the 21st instant, at 10 o'clock a. m.

Submission of cause.—Extract from minutes, 21st day of January, 1879.

3rd dist. court for the parish of Orleans.

STATE, EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

This case came on this day for further trial—present, R. Mott for relators; E. H. McCaleb for respondents—when, after hearing further evidence and argument of counsel, the court took time to consider.

56 *Reasons for judgment.—Filed 31st Jan'y, 1879.*

Third district court for the parish of Orleans.

STATE, EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

Relators allege that on the 28th June, 1877, they recovered judgment against the City of New Orleans for the sum of $26,850.00, with interest and costs, and that they are the transferrees of a judgment obtained by Guilfoux & Lee against said city, upon the 15th June, 1874, for the sum of $2,000.00 and costs.

That said judgments were registered in the office of the administrator of public accounts in accordance with the provisions of act No. 5, extra session of 1870. The judgment of Guilfoux & Lee having been so registered January 15th, 1876, and that in favor of relators July 15th, 1877. That said judgments should have been put upon the budget of taxes to be collected by the city, and should have been paid, wholly or in part, from such taxes, and in fact that they, with other judgments against the city, were punctually put upon the budget, and taxes were to some extent levied and collected, and should have been applied to the payment and extinction of said judgments, but were not so applied, and that no part of said judgments has been paid.

57 That judgments for large amounts were registered prior to those of relators, amounting, as claimed by the city, to $500,000.00, and it was the duty of the city officers to place them all on the budget and collect taxes and pay them, but that they have been only in part placed on said budget, and the taxes collected have not been applied to their judgment or partial payment, but to other uses; that the officers of the city have refused to place all of said judgments in the budget and to levy and collect taxes for their payment as required by law, although requested by relators so to do.

That, under the law, relators are prohibited from issuing execution upon their said judgments, and are without remedy, except through the levy of taxes for their payment, and that the refusal of the officers of the city to levy such taxes deprives relators of all means of collecting said judgments, and is in violation of their vested rights, and of the constitution and laws of the United States, and of this State.

They pray that a writ of mandamus issue, commanding the city, through its officers, "to place upon the budget for taxes for the year 1879, and all succeeding years until the same be fully paid, all the judgments, including those of relators, which have been registered according to law,
58 in addition to the other taxes to be levied according to law, and to impose taxes in addition to all other taxes required for other expenses to a sufficient amount to pay and satisfy the whole of said registered judgments.

To this the administrators of the city of New Orleans answer as follows:

They deny that there has been any division of funds set apart for the payment of relators, or that they refused to budget the judgments in question, averring that so short a time elapsed between the demand and the institution of this proceeding that they were unable to signify their assent or dissent in the matter.

They allege, however, as a reason ' not complying with said demand, that there is no money in the city treasury out of which the relators can or ought to be paid; that the power of the city to levy taxes is limited to one and a half per cent. upon the appraised value of the property subject to taxation, and that said value does not exceed $111,000,000.00; that the revenue of the city for the year 1879, from all sources, will not be sufficient to pay its necessary current expenses for maintaining the
59 government, which expenses are necessarily privileged and must be provided for before debts can be paid.

That inasmuch as taxation to the limit of the law, together with all other sources of revenue, will not produce a sufficient amount for the necessary alimony of the city government, and all appropriations in excess of the revenue are prohibited by law, it is impossible for respondents to budget the judgments referred to.

That should there be any surplus on hand after paying the expenses of the city they propose to apply the same to the judgment or judgments in the order in which they are registered, and that they can do no more. Wherefore they pray to be hence dismissed, etc.

The evidence shows that relators filed a suit in the superior district court, May 15th, 1873, claiming that upon the sixth of that month a mob or riotous assembly had broken into their store in the city of New Orleans, and had destroyed property to the value of $26,858.00, and that the city of New Orleans was liable therefor, and praying judgment accordingly.

The case was tried before a jury and verdict rendered for $15,000.00, which was made the judgment of the court. The plaintiffs appealed,
60 and in December, 1876, the supreme court gave judgment (reversing the verdict and judgment appealed from) for the full amount claimed. (See 29 annual, 937.)

It further appears that on the 24th March, 1873, Guilfoux & Lee instituted suit in the same court upon a similar cause of action alleged to have

arisen upon the 5th of that month, and claiming $8,124.55, and a verdict and judgment was rendered in their favor for $2,000.00 and costs; the judgment having been signed July 3d, 1874. Relators were duly subrogated to the rights of the plaintiffs under that judgment.

Whether it was ever appealed from the court is not advised, nor is it material, since it is not claimed that it is now final.

It also appears that these judgments were properly registered upon January 15th, 1876, and July 15th, 1877, as alleged in the petition.

This registration was made pursuant to section 2 of act No. 5, of 1873 (extra session), which provides:

"That hereafter no writ of execution or fieri facias shall issue from any of the courts in this State against the city of New Orleans to enforce the payment of any judgments for monies against the city of New Orleans, but
61 final judgment against the city of New Orleans, commanding said corporation to pay any sum in money, when the same shall have become executory, shall have the effect in law of establishing and fixing the amount of plaintiff's demand against said corporation, and the plaintiff may cause a certified copy of said judgment, together with a copy of the plaintiff's petition and defendant's answer in the cause which judgment is rendered, together with the certificate of the court that such judgment is final and executory, to be filed in the office of the controller of said city; and it shall be the duty of the controller or auditing officer of said corporation to receive the same and cause the same to be registered in his office of the date in which the same shall have been presented, and when so registered it shall be the duty of the controller to warrant on the treasurer or disbursing officer of the corporation for the amount due thereon, without any special appropriation of money therefor by the common council; provided always, that there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability and expenditures
62 required to be made by the one hundred and twenty-fourth section of the act of the legislature entitled 'An act to constitute the city of New Orleans,' etc., of 1856. Section 3 of this act further provides, "That in case the amount of money designated in the annual budget for the payment of judgments against the city of New Orleans, at the date when any judgment against said corporation shall have been final and executory, shall have been exhausted, the common council shall have power, if they deem it proper, to appropriate from the money set apart in the budget or annual estimate for contingent expenses a sufficient sum of money to pay said judgment or judgments; but if no such appropriation be made by the common council, then all judgments shall be paid in the order in which they shall be filed and registered in the office of the controller from the first money next annually set apart for that purpose."

The fourth section provides that if, by reason of the neglect or malfeasance of the officers, any judgment creditor shall be unjustly delayed, or shall not be paid in his regular order, and shall suffer loss thereby, he shall have a right of action against such officers and their sureties.

The evidence further shows that, including the judgment registered in favor of relators upon the 15th July, 1877, there are still
63 unpaid judgments registered up to that date, which amount in the aggregate, with interest and costs estimated, to the round sum of $290,000.00.

The amount registered since the 15th July, 1877, is not shown. The estimated receipts for the year 1879, as shown by the budget offered in evidence (from all sources), amount to $1,959,630.

The estimated expenditures, as shown by the testimony of the administrator of accounts, and by the profit of the budget of expenditures adopted by the council in committee of the whole, exactly covers the estimated receipts.

In the last mentioned budget, or , there is an item of $10,000.00 for judgments, and another item of $2,190.00 for "contingent."

It requires no profound mathematician to demonstrate that, with judgments registered and unpaid up to the 15th of July, 1877, amounting to $290,000, aside from those which have been registered since that date, an annual appropriation of $10,000.00 will make very little impression upon the judgment debt of the city.

Taking the principal of this debt at $242,929.37, as stated by the respondents, and omitting the $48,000.00 estimated interest and
64 costs, it is evident that $10,000 per annum will fall something like $2,100 short of paying interest on said debt at the legal rate of five per centum, so that instead of decreasing, the judgment debt will increase year by year, and the judgment in favor of relators, being the last registered of the series which make up the amount referred to, cannot only never be paid, but, as if to carry him even beyond eternity, its prospect of payment becomes more remote with each succeeding year. It becomes the duty of the court to inquire whether the views of the learned counsel for the respondents, which lead to conclusions so deplorable to the relators, are well founded.

It has already been stated that the judgments of the relators are based upon obligations which arose in the early part of the year 1873.

At that time there was in force, unquestioned, certain provision' of law contained in section 19 of act No. 7, of 1870 (extra session), said act being commonly known as the new city charter. The provisions in question were as follows: "That the council shall once in every twelve months, before fixing and deciding upon the amount of taxes and licenses to be assessed for the ensuing year, cause to be made out a detailed
65 estimate exhibiting the various items of liabilities and expenditures, including the requisite amount for contingent expenses during said year, and shall cause the same to be published for at least ten days in the official journal of the city, and such rate of taxation, not exceeding one dollar and seventy-five cents on every hundred dollars of valuation, shall thereafter be fixed and assessed as, together with other revenues of the city, may be necessary to meet said estimated liabilities and expenditures. The adoption of said detailed estimates shall be considered as the appropriation of the amount therein stated for the purposes therein stated, and the administrator of public accounts shall not audit, nor shall the administrator of finance draw or sign any check upon the fiscal agent therefor of any claims, unless an appropriation therefor has been duly made in accordance with this act."

In the absence of any other statutory provision controlling the subject it would appear that it was a matter of right upon the one hand and of duty upon the other that the claims of the relators and of Guilfoux & Lee, for which the city was liable in 1873, should have been placed upon the

detailed estimate of liabilities and expenditures provided for as above
66 some time within the twelve months after they arose, and that the common council should have assessed such rate of taxation not exceeding one $\frac{75}{100}$ per cent. upon the taxable property of the city, as with the other revenues of the city would have sufficient to satisfy said claims.

This, however, was not done. The liability of the city was disputed in the courts (no complaint can be made of this) and as a result of the litigation it was ascertained by final decisions of the courts that the liability existed, judgments were rendered and registered—that in favor of Guilfoux & Lee registered January 15th, 1876, and that in favor of relators registered July 15th, 1877.

In the meanwhile, however, it is claimed by respondents that changes had taken place in the constitution and the laws of the State by which the rights of the parties were affected.

The following are the changes referred to, to wit:

1st. An amendment to the constitution was adopted in November, 1874, prohibiting the city of New Orleans from increasing its debt in any manner or form or under any pretext and prohibiting the officers of said city after January 1st, 1875, from issuing any warrant or other evi-
67 dence of indebtedness, except against money actually in the treasury, reserving to the city, however, the right to exchange new bonds for old ones, and making a special exception as to certain drainage warrants.

2. An act was passed in 1876 (No. 31) known as the premium-bond act, in which it was provided that the mayor and administrators should "exchange all recognised and valid bonds of the city of New Orleans and of the late cities of Jefferson and Carrollton for bonds known as the premium bonds of the city of New Orleans," etc.

It was further provided that in the month of December of each year the common council should include in the annual budget for the ensuing year a sufficient sum to pay the interest and principal falling due under the premium-bond scheme as put in operation by said act, and should levy a tax to pay the same, to constitute a special fund, subject to the following proviso, to wit:

"Provided that the taxable power of the corporation of New Orleans, for all purposes, including general administration, school, police, lighting, salary officers, court expenses, and every other purpose of government, including the sum to be raised to pay the premium bonds, as above stated, shall never, until the full, complete, and final payment of the said
68 premium bonds exceed the rate of one and a half per centum on the dollar of all the assessed value of property subject to taxation within the limits of said city of New Orleans," etc.

Section 5 of this act repeals all other acts authorizing the levying or collection of any tax, for the payment of the principal or interest of any bonds other than premium bonds, and prohibits the courts from issuing writs of mandamus to compel the collection of any other interest tax whatever.

3. Still another act was passed in 1877, to which the court is referred, to wit, act No. 30, of 1877, by which, among other things, all municipal corporations in the State are prohibited from making appropriations for any one year in excess of the revenues for such year.

Arguing upon the basis of this legislation and of the evidence offered, the counsel for respondents concludes, that the only remedy which the law give to the relators at the time they acquired their rights has been taken from them—that although at that time (as has since been ascertained by judgments rendered) they were entitled to have an appropriation made for the payment of their claims, and to participate in the fruits of a tax to the extent of one $\frac{75}{100}$ per cent. upon the assessed value
69 of the taxable property in the city, yet, that by subsequent legislation, they are utterly divested of these rights and remedies, and can claim nothing which the courts will enforce.

It is claimed that under this recent legislation the limit of taxation has been reduced to one and one-half per cent., being a reduction of $2\frac{1}{2}$ mills as compared with the rate authorized when the claims of relators originated, and that after the payment of the necessary expenses of the city government, and of these creditors of the city who are referred to in act No. 31 of 1876, nothing is left wherewith to pay the relators, or any other creditors, save the sum of $10,000.00 (or, if we include the contingent, at most, $12,000.00), the appropriation of which amount, as we have seen, leaves the aggregate indebtedness to such creditors to increase year by year.

In the case of Butz vs. The City of Muscatine (8 Wallace, 581), to which the court has been referred, the Supreme Court of the United States used the following language, which seems singularly applicable to the case at bar, viz:

"All the corporate property of the debtor is exempt by law from
70 execution. The tax of one per cent. is all absorbed by the current expenses of the debtor. There is neither surplus nor a prospect of surplus which can be applied upon the judgment. The resources of the debtor may be ample, but there is no means of coercion; until the debtor chooses to pay the creditor can get nothing. The usual relations of debtor and creditor are reversed, and the judgment, though solemnly rendered, is as barren of results as if it had no existence. Such are the effects which must necessarily follow from the theory, if maintained, of the defendants in error. Nothing less than the most cogent considerations could bring us to the conclusion that it was the intention of the law-making power of so enlightened a State to produce by its action such a condition of things in its jurisprudence."

In the case in which the decision just quoted was rendered it appears that the character of the city of Muscatine limited taxation to one per cent., which made the general provisions of the code of Iowa, previously existing, in cases where executions against corporations were returned unsatisfied, they were required to levy a tax as early as practicable to pay off the judgment.

This code, with its general provisions, was re-enacted after the adop-
71 tion of the charter of the city of Muscatine. In the meanwhile, however, bond had been issued by said city and money recovered. The question decided by the Supreme Court was that the lender of the money was entitled to enforce a tax for the payment of his claim under the general provisions of the code, and that the limitation in the city charter applied only to the voluntary action of the city officers, and not to their obligations with respect to the payment of judgments.

In the case of Supervisors *vs.* The United States (18 Wallace, p. 71) the

plaintiff applied for a mandamus to compel the supervisors of Carroll County, Iowa, to levy a special tax, for the payment of a judgment obtained by him on warrants issued in the ordinary expenditures of the county. The supervisors answered that they were only authorized to levy a tax of four mills for such expenditures; that they had levied a tax at this rate for the current year, and would continue to levy a similar tax for each succeeding year until the judgment should be paid. The Supreme Court held that they could not be compelled to do more, and referring to the decision in the case of The City of Muscatine, as to the construc-
72 tion of the code of Iowa, stated that when that decision was rendered the supreme court of Iowa had not passed upon that question. Neither of the cases mentioned involve the conditions which are presented in the case at bar. In both of these cases the law limiting the rate of taxation was in force when the obligations were created, and the revenues derived appear in the one case to have been applied wholly to the necessary expense of the government, and in the other case justly to that purpose, and, as far as can be gathered from the judgment, justly to the extinguishment of claims of a similar character with a prospect of reaching that of the plaintiff. In the case at bar, when the obligation was created, the limit of taxation here set up had not been fixed, and it appears from the evidence that the tax realized is appropriated to the payment of a particular class of creditors, and to the expenses of government, with no prospect or hope that the claim of the relators will ever be reached.

It does not appear from anything before this court, other than the act No. 31 of 1876, that the creditors in whose favor the revenues of the common debtor were thus disposed of were entitled to any priority of payment over the relators, nor that they were entitled by virtue of any law
73 existing at the time that the obligation in favor of relators was created to appropriate the whole of the available assets of the city, to the exclusion of all other creditors. It would therefore appear to paraphrase the language of the court in the case of "State ex rel. Knaland *vs.* Shreveport," 29 Ann., 662, to which counsel for respondents has referred, that the rights of the relators "are fixed by a decree, and should have been classed as acknowledged creditors of the city;" as such they are entitled to and "should be allowed a proportionate share in any and every surplus of funds which may remain in the treasury after the payment of expenditures indispensable to the government of the city."

This would seem to follow in any view of the case, the more especially when it is remembered that the judgment in favor of Guilfoux & Lee was actually registered before the act of 1876 was passed.

But in the opinion of the court relators are entitled to more than this. At the time that their rights were acquired the sole remedy to which they were entitled, and through the medium of the then existing taxing power of the city. If that power can be diminished by subsequent legislation, or that, upon the most reasonable construction of the statutes,
74 the enforcement of their rights will be impeded for an indefinite period, it might with the same propriety be withdrawn altogether, thus operating an absolute divestiture of the remedial right which had existed in the relators.

The court is therefore of opinion that the relators is entitled to the remedy which the law afforded them when this right sprang into exist-

ence, since no other remedy has been provided, and as part of that remedy that they are entitled to demand the exercise of the taxing power by respondents as it then existed. With relation to the budget for the present year, an investigation of the statutes to which the court has been referred has disclosed the fact that the legislature apparently were looking (section 19 of the new city charter, act No. 7 of 1870), have made section 124 of the charter of 1856 the laws of the city's budgets. This section requires that the budget shall be prepared in the month of December of each year, and as the case was not tried until the 10th of January, it would seem to be impracticable to effect the object desired by the relators, so far as the budget for this year is concerned.

It is therefore ordered, adjudged, and decreed that the writ of
75 mandamus herein issued be made peremptory, in so far as to order the respondents to place upon the next budget or detailed estimate of liabilities and expenditures to be prepared by them in their official capacities, and upon succeeding budgets, until the same shall be paid in full, all judgments registered against the city of New Orleans, pursuant to the provisions of act No. 5, of the extra session of 1870, from the 15th day of July, 1877, together with the judgment rendered in favor of the relators herein and registered upon that day, and that with a view to the payment of said judgment, respondents be ordered to levy taxes to the extent of one dollar and seventy-five cents upon every hundred dollars of valuation as prescribed by section 19, of act No. 7, of the extra session of 1870.

It is further ordered that respondents pay the costs of this proceeding

Judgment.

Third district court for the parish of Orleans.

STATE, EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF NEW ORLEANS. } No. 25521.

For the reasons assigned in the written opinion of the court this
76 day delivered and filed, it is ordered, adjudged, and decreed that the writ of mandamus herein issued be made peremptory in so far as to order the respondents to place upon the next budget or detailed estimate of liability and expenditures to be prepared by them in their official capacities, and upon succeeding budgets, until the same shall be paid in full, all judgments registered against the City of New Orleans pursuant to the provisions of act No. 5, of the extra session of 1870, prior to the 15th day of Feb'y, 1877, together with the judgment rendered in favor of relators herein and registered upon that day, and that with a view to the payment of said judgment, respondents be ordered to levy taxes to the extent of one dollar and seventy-five cents upon every hundred dollars of valuation as provided by section 19, of act No. 7, of the extra session of 1870.

It is further ordered that respondents pay the costs of this proceeding.

Judgment rendered January 31st, 1879, and signed February 5th, 1879.

(Signed) F. A. MONROE, *Judge.*

Motion & order of appeal.—Extract from minutes, & filed Feb'y 5th, 1879.

3d dist. court for the parish of Orleans.

STATE, EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

77 On motion of E. H. McCaleb, esq., city att'y for the city of New Orleans, and on suggesting that said City of New Orleans is aggrieved by the final judgment herein rendered on the 31st January, and signed on the 5th February, 1879, and desirous to appeal therefrom to the supreme court of Louisiana: It is ordered that a suspensive appeal be granted to the City of New Orleans from the final judgment herein rendered on the 31st day of January, and signed on the 5th day of February, 1879, returnable to the supreme court at New Orleans, on the 1st Monday of March, 1879.

RECORD NO. 9837 OF THE SIXTH DISTRICT COURT, FOR THE PARISH OF ORLEANS, ENTITLED "STATE OF LOUISIANA, ON THE RELATION OF FOLSOM BROTHERS, VS. THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS," OFFERED IN EVIDENCE BY COUNSEL FOR RELATOR.—FILED 10TH JANUARY, 1879.

Petition.—Filed 21st February, 1878.

To the honorable the judge of the sixth district court, for the parish of Orleans:

The petition of the State of Louisiana on the relation of Folsom Brothers, a commercial firm, domiciled in New Orleans, composed of George Folsom, who resides in the State of Mississippi, at Magnolia, and
78 of Henry Folsom, residing in the city and State of New York, with respect represents:

That on the 28th day of June, 1877, petitioners recovered a final judgment against the City of New Orleans, a municipal corporation of the State of Louisiana, in the suit No. 24751, in the third district court for the parish of Orleans, for the sum of twenty-six thousand eight hundred and fifty-eight dollars, with interest and costs.

That after the said judgment became final, petitioners, in compliance with the statutes of the State of Louisiana, filed with the proper officers of said city a duly certified copy of the petition, answer, verdict, and final judgment rendered, with the amount of the costs incurred in said case, with the view and intention of having the same put in the budget of said city of the year 1878, of taxes to be collected by the said city for the said year, and petitioner is informed and so avers the fact to be that the same was so placed on said budget, and taxes have been and are to be collected to pay the said judgment.

That relators have called on the proper officer of said city for the proportion of the taxes so collected for the payment and satisfaction of said judgment, and have been refused by the said city, the payment of said

79 proportion of taxes so collected, for their benefit, under the averment and pretense that the whole of the taxes collected by said city are necessary to support and maintain the city government, and that relators cannot have the amount for which they were placed for said judgment on the budget aforesaid.

Petitioner further represents that Guilfoux & Lee recovered in the superior district court for the parish of Orleans a final judgment against the said City of New Orleans, on the 15th June, 1874, for the sum of two thousand dollars, and thereafter transferred the same to relators, and subrogated relators to all their rights against the said city, and relators, in compliance with the said statutes of the State, filed with the proper officer of said city, the duly certified copy of the petition, answer, verdict, and judgment rendered in said case, being No. 2561 on the docket of said court, as required by law, and the said judgment was placed on the budget of the said city as forming part of the amount of taxes to be collected, and was embraced in the amount of taxes to be levied and collected by said city; and the said city has collected the proportion of said tax, levied for the purpose of paying said judgment, the property of said relators,

80 but the said city has refused to pay over to relators the amount of the taxes so collected, as aforesaid, for the benefit of relators, and has applied and continues to apply the same to other purposes, contrary to law and the rights of relators. And petitioners further aver that in compliance with the statutes of this State, sundry persons who have recovered judgments against the said City of New Orleans have filed with the proper officer of said city duly certified copies of their petitions, answers, and judgments, and the same have from time to time been placed on the several budgets of the said city for several years, the amounts of which were to be collected and paid over to the said several parties as fast as collected in the taxes of said city. That city has collected from time to time taxes which were collected for, and should have been applied to, the payment of said judgments as aforesaid, which should have been extinguished thereby, but the said sums of money so collected instead of having been applied to the payment of said judgments, have been diverted to some other purpose, and the said judgments still appear on the list of judgments registered as due by the said city, and as having a preference for payment over the two aforesaid judgments belonging to relators. That the said parties, judgment creditors of said city, by having submitted to the misappro-

81 priation of the moneys collected for their benefit as aforesaid, have lost their right of preference over relators, if any they ever had, and the said city of New Orleans by having misappropriated said sums of money collected, as aforesaid, for the benefit of the said judgment creditors, has lost the right of setting said judgments up as judgments to be paid in preference to the two judgments owned by relators as aforesaid.

Petitioner avers that among the judgments registered to be paid by said city, placed in the budgets, was one registered on the 1st July, 1873, in favor of the commissioners of the New Orleans park for seventy-eight thousand one hundred and seventy-two $\frac{17}{100}$ dollars, which judgment is extinguished by confusion, the said commissioners of the city park having been abolished by act of the legislature of Louisiana approved 20th April, 1877, and all the powers and duties conferred by law on said park commissioners were transferred to and conferred on the city council of New

Orleans, whereby all the powers of said park commissioners were vested in said City of New Orleans, and the said park commissioners, in obedience of said law, have transferred and delivered to said city all the papers, books, and assets of said park commissioners. That said item of
82 $78,172.12 should be stricken out of said registry, which would leave a sufficient sum collected in taxes to pay judgments to pay and satisfy the two judgments of relators as aforesaid.

Petitioner avers that the acts of the said City of New Orleans in the premises are wrongful, and that it should be compelled to pay relators the amounts levied and collected, and to be levied and collected as taxes for the purpose of paying the aforesaid two judgments, the property of relators.

Wherefore petitioner prays that the City of New Orleans be ordered to show cause, on a day to be fixed by the court for that purpose, why a peremptory writ of mandamus shall not issue, ordering and compelling the said city, and its proper officers, viz: Edward Pilsbury, mayor, Jules C. Denis, administrator of finance, James G. Brown, administrator of accounts, John E. Rengstorff, administrator of assessments, John McCaffrey, administrator of improvements, James D. Edwards, administrator of water works and public buildings, Charles Cavanac, administrator of commerce, and Robert E. Diamond, administrator of police, to strike out and erase from the registry of judgments the one in favor of the commissioners of the New Orleans park, registered on July 1st, 1873, for $78,172.12,
83 and further ordering and compelling them to pay your relators said two judgments, one for twenty-six thousand eight hundred and fifty-eight dollars, with interest at five per cent. per annum from May 16th, 1873, and costs, and the other for two thousand dollars, interests and costs, as aforesaid, and your relators pray for all and further relief as the nature of the case may admit.

(Signed) ROBERT MOTT,
Att'y of Relators.

(Signed) THOS. J. SEMMES,
Of Counsel.

Affidavit of George Folsom for writ of mandamus, annexed to and made part of petition.—Filed 21st February 1878.

Personally appeared George Folsom, one of the relators herein, who' being sworn, says that the facts contained in the foregoing petition are true.

(Signed) GEO. FOLSOM.

Sworn to and subscribed before me this 21st day of February, 1878.

[SEAL.] (Signed) R. C. MOTT,
Notary Public in and for the Parish of Orleans.

Order to issue writ of mandamus.

Let a writ of mandamus issue herein, as prayed for, commanding the City of New Orleans, through its proper officers, to comply with
84 the demand of the relator herein as contained in the prayer of the within petition, or show cause to the contrary, on Monday, the

11th day of March, eighteen hundred and seventy-eight, at 11 o'clock a. m.

New Orleans, February 21st, 1878.

(Signed) N. H. RIGHTOR, *Judge.*

Writ of mandamus to be served on the City of New Orleans, through its proper officers.—Issued 25th Feb'y, 1878.

STATE OF LOUISIANA:

Third district court for the parish of Orleans, the State of Louisiana.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
CITY OF NEW ORLEANS. } No. 9837.

6th district court for the parish of Orleans.

To the City of New Orleans, through its proper officers, Edward Pilsbury, mayor; John McCaffrey, administrator of improvements; Robert E. Diamond, administrator of police; John E. Rengstorff, administrator of assessments; Charles Cavanac, administrator of commerce; J. G. Brown, administrator of accounts; James D. Edwards, administrator of water works and public buildings; and J. C. Denis, administrator of finance, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the sixth district court for the parish of Orleans, to comply with the demand of the relator herein, as contained in the prayer of the
85 petition, a copy of which accompanies this writ, and is made a part hereof, or show cause to the contrary, on Monday, the 11th day of March, 1878, at 11 o'clock a. m.

And what you do in the premises you make return thereof, together with this writ, to our said court as the law directs.

Witness, the honorable N. H. Rightor, judge of our said court, this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and second year of the Independence of the United States.

[SEAL.] (Signed) H. MIESTER,
Deputy Clerk.

Return on writ of mandamus to the City of New Orleans, through its proper officers.—Filed 2d & 6th March, 1878.

Received second March, 1878, and on the same day, month, and year served copy of within writ of mandamus and accompanying petition on Charles Cavanac, administrator of commerce, in person.

(Signed) WM. J. GRADY,
Deputy Sheriff.

And on the 6th of the same month and year served copy of the within writ of mandamus and accompanying copy of petition on John
86 McCaffrey, administrator of improvements; on Edward Pilsbury,

mayor; on Robert E. Diamond, administrator of police; on J. C. Denis, administrator of finance; on J. G. Brown, administrator of accounts, in person; on J. D. Edwards, through Edward Keena, chief clerk; on J. E. Rengstorff, administrator of assessments, through Charles J. Fletcher, chief clerk, in person, the said J. D. Edwards and J. E. Rengstorff being absent from their office at the time of said service.

Returned same day.

(Signed) WM. J. GRADY,
Deputy Sheriff.

Continuance of case.—Extract from minutes 11th day of March, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
CITY OF NEW ORLEANS. } No. 9837.

This case, assigned for trial on this day, was ordered to be continued to Tuesday, 25th instant, at eleven o'clock a. m.

Continuance of cause.—Extract from minutes 26th day of March, 1878.

Sixth district court for the parish of Orleans.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
CITY OF NEW ORLEANS. } No. 9837.

87 This case, assigned for trial on this day, on motion, and by consent of counsel, was ordered to be continued to Tuesday, April 9th, 1878, at eleven o'clock a. m.

Answer of the City of New Orleans.—Filed 26th March, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
CITY OF NEW ORLEANS. } No. 9837.

Now comes the City of New Orleans, and the mayor and administrators thereof, and show for cause why the mandamus should not issue against them as therein prayed for, as follows, to wit:

That there is no money in the city treasury to the credit of the judgments now sought to be enforced, and no money collected or appropriated for the payment thereof, and therefore a writ of mandamus will not lie against these respondents to compel the said payment.

Respondents further say that no special tax is levied for the purpose of paying judgments, but that on' certain amount is appropriated each year in the budget of city expenditures for that purpose, payable from the general fund; that the sum of dollars was appropriated out of the

88 general fund for 1878 for the payment of the judgments, and that but a small portion of the taxes of 1878 have yet been collected, and those collections were appropriated and have been used in the defrayal of the actual and necessary expenses of running the city government.

Respondent' further say that without estimating the judgment for park tax, there is an amount of over two hundred and sixty-four thousand dollars due in judgments registered against the city prior to, and which have preference over, the judgment registered by relators (the judgment of which is now sought to be enforced), and judgments to the amount of over forty-three thousand dollars (exclusive of interest) registered prior to, and having precedence over, the judgment of Guilfoux & Lee, of which relators claim to be the transferrees; and respondents say that the monies received in the city treasury (when there shall be any) for the payment of judgments, must be appropriated to their payment in regular order of priority, and respondents say that this honorable court cannot change the said order of priority and payment, and cannot do so, at least, without full notice to the said holders of registered judgments claiming said priority.

Wherefore respondents pray that the petition of relators may
89 be dismissed with costs, and for general relief.

(Signed) ED. PILSBURY,
Mayor of the City of New Orleans.

(Signed) B. F. JONAS,
City Attorney.

Personally appeared Edward Pilsbury, mayor, J. G. Brown, administrator of accounts, and J. C. Denis, administrator of finance, of the city of New Orleans, who, being duly sworn, say that all of the facts contained in the foregoing return are true to the best of their knowledge and belief.

(Signed) ED. PILSBURY, *Mayor.*

(Signed) J. G. BROWN,
Administrator of Public Accounts.

(Signed) J. C. DENIS,
Administrator of Finance.

Sworn to and subscribed before me, New Orleans, March 26th, 1878.

[SEAL.] (Signed) J. PARIS CHILDRESS,
First Justice Peace.

Continuance of cause.—Extract from minutes 9th day of April, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
CITY OF NEW ORLEANS. } No. 9837.

This case, assigned for trial on this day, on motion and by consent of counsel, was ordered to be continued to Tuesday, April 23d, 1878, at 11 o'clock a. m.

Continuance of rule.—Extract from minutes 23d April, 1878.

90 6th dist. court for the parish of Orleans.

STATE OF LA., EX REL. FOLSOM BROS.,
vs.
CITY OF NEW ORLEANS. } No. 9837.

This rule, fixed for this day, not having been reached, at the expiration of the rule hour was ordered to be continued until May 3d, 1878.

Continuance of cause.—Extract from minutes 3d May, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA., EX REL. FOLSOM BROS.,
vs.
CITY OF NEW ORLEANS. } No. 9837.

This cause, assigned for trial on this day, by consent of counsel, was ordered to be continued to Friday, 17th inst., at 11 a. m.

Continuance of cause.—Extract from minutes 17th May, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
CITY OF NEW ORLEANS. } No. 9837.

This case, assigned for trial on this day, was ordered to be continued, with preference, to the 29th instant, at eleven o'clock a. m.

Continuance of cause.—Extracts from minutes 29th May, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
CITY OF NEW ORLEANS. } No. 9837.

This cause, assigned for trial on this day, was ordered to be continued.

91 RECORD NO. 25495 OF THE DOCKET OF THE THIRD DISTRICT COURT FOR THE PARISH OF ORLEANS, IN THE MATTER OF THE STATE, EX REL. FOLSOM BROTHERS, VS. MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.—OFFERED IN EVIDENCE BY COUNSEL FOR RELATOR ON THE 10TH DAY OF JANUARY, 1879.

Petition for mandamus.—Filed 30th November, 1878.

To the honorable the judge of the third district court for the parish of Orleans:

The petition of the State of Louisiana, on the relation of Folsom Broth-

ers, a commercial firm domiciled in New Orleans, composed of George Folsom, who resides in the State of Mississippi, at Magnolia, and of Henry Folsom, residing in the city and State of New York, with respect, represents that on the 28th day of June, 1877, petitioners recovered a final judgment against the City of New Orleans, a municipal corporation of the State of Louisiana, in the suit No. 24751 in the third district court, for the parish of Orleans, for the sum of twenty-six thousand eight hundred and fifty dollars, with interest and costs.

That after the said judgment became final, petitioners, in compliance with the statutes of the State of Louisiana, filed with the proper officer of said city a duly certified copy of the petition, answer, verdict, and
92 final judgment rendered, with the amount of the costs incurred in said case, with the view and intention of having the same put on the budget of said city of the year 1878 of taxes to be collected by the said city for the said year and succeeding years, and petitioner is informed, and so avers the fact to be, that the same was so placed on said budget, and taxes should have been collected to pay the said judgment.

That relators have called on the proper officer of said city for the proportion of the taxes so collected for the payment and satisfaction of said judgment, and have been refused by the said city the payment of any proportion of taxes so collected, under the averment *of* the whole of the taxes collected by said city are necessary to support and maintain the city government, and that the relators cannot have the amount for which they were placed for said judgment on the budget aforesaid.

Petitioner further represents that Guilfoux and Lee recovered in the superior district court for the parish of Orleans a final judgment against the said city of New Orleans, on the 15th June, 1874, for the sum of two thousand dollars, and thereafter transferred the same to relators, and subrogated relators to all their rights against the said city, and relators, in compliance with the said statutes of the State, filed with the proper officer of the city the duly certified copy of the petition, answer, verdict, and judgment rendered in said case, being No. 2561 on the docket of
93 said court, as required by law, and said judgment was placed on the budget of the said city as forming part of the amount of taxes to be collected, and was embraced in the amount of taxes to be levied and collected by said city, and the said city has collected the proportion of said tax levied for that purpose of paying said judgment, the property of relators, but the said city has refused to pay over to relators the amount of the taxes so collected as aforesaid for the benefit of relators, and has applied, and continues to apply, the same to other purposes, contrary to law and the rights of relators.

And petitioner further avers that in compliance with the statutes of this State sundry persons who have recovered judgments against the said City of New Orleans have filed with the proper officer of said city duly certified copies of their petitions, answers, verdicts, and judgments, and the same, or a portion of the same, have from time to time been placed upon the several budgets of the said city for several years, the amounts of which were to be collected and paid over to the said several parties as fast as collected in the taxes of said city.

That said city has collected from time to time taxes which were collected for and should have been applied to the payment of said judgments

94 as aforesaid, which should have been extinguished wholly or in part thereby, but the said sums of money so collected, instead of having been applied to the payment of said judgments, have been diverted to some other purpose, and the said judgments still appear on the list of judgments registered as due by the said city, and as having a preference for payment over the two aforesaid judgments belonging to relators.

Petitioners aver that by law they cannot issue execution against the said city, and that it is provided that all judgments rendered against the said city shall be duly registered by the proper officer thereof, and that the whole amount of all of said judgments should be put upon the budget of taxes to be collected, and the amount so placed upon the budget should be levied as a tax upon the whole taxable property of New Orleans in addition to the other amounts to be levied as taxes, and that the amount so levied for the payment of the said registered judgments should be placed in the treasury of the city to the credit of said registered judgments, to be applied to their payment in the order of their priority of registry.

95 Petitioners aver that the administrators of the said city of New Orleans have neglected and refused to put upon the budget of taxes heretofore made up the amount of said several judgments that have been registered as aforesaid according to law to a sufficient amount to provide for the payment of said judgments out of the taxes to be collected as aforesaid, and by law they should be compelled to do so, that petitioners may in due time be paid the amount due them.

Wherefore relators pray that the City of New Orleans be ordered to show cause, on a day to be fixed by the court for that purpose, why a peremptory writ of mandamus should not issue ordering and compelling the said City of New Orleans and its proper officers, viz: Isaac W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; J. D. Houston, administrator of improvements; E. R. Chevalley, administrator of water works and public buildings; J. Henry Behan, administrator of commerce, and Patrick Meallie, administrator of police, to place upon the budget for taxes for the year 1879, and all succeeding years until the same be fully paid, all the judgments, including those of relators, which have been registered according to law, in addition to the other taxes to be levied according to law, and thus provide and collect a fund to pay

96 and satisfy the whole of said registered judgments, and for general relief.

(Signed) ROBERT MOTT,
Attorney of Plaintiffs.

(Signed) T. J. SEMMES,
Of Counsel.

Affidavit of George Folsom, relator herein.—Filed 30th November, 1878.

Personally appeared George Folsom, one of the relators herein, who, being sworn, says that the facts contained in the foregoing petition are true.

(Signed) GEORGE FOLSOM.

Sworn to and subscribed before me this 29th day of November, 1878.

[SEAL.] (Signed) R. C. MOTT,
Notary Public in and for the Parish of Orleans, Louisiana.

Order to issue writ of mandamus.

Let a writ of mandamus issue in this case as prayed for, & according to law, commanding the mayor and administrators of the city of New Orleans to comply with the demand of the within petition, or show cause to the contrary, on Monday the 9th day of December, 1878, at eleven o'clock a. m.

New Orleans, November 30th, 1878.

(Signed) F. A. MONROE, *Judge.*

97 *Writ of mandamus served on the City of New Orleans, through its proper officers, and the Mayor and Administrators of the City of New Orleans.—Issued 4th December*, 1878.

STATE OF LOUISIANA:

Third district court for the parish for Orleans, the State of Louisiana.

STATE, EX REL. FOLSOM BROTHERS,
vs.
MAYOR AND ADMINISTRATORS OF THE CITY of New Orleans. } No. 25495.

3rd dist. court for the parish of Orleans.

To (1st) the City of New Orleans, through its proper officer; (2nd) I. W. Patton, mayor of the city of New Orleans; (3rd) A. H. *A. H.* Isaacson, administrator of finance; (4th) John Glynn, jr., administrator of accounts; (5th) Washington Marks, administrator of assessments; (6th) J. D. Houston, administrator of improvements; (7th) E. R. Chevalley, administrator of water works and public buildings; (8th) J. Henry Behan, administrator of commerce; (9th) Patrick Meallie, administrator of police, all of the city of New Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the third district court for the parish of Orleans, to comply with the demand of the petition, a true copy whereof accompanies this writ, or
98 show cause to the contrary, on Monday, the ninth day of December, 1878, at eleven o'clock a. m.

Witness the honorable F. A. Monroe, judge of our said court, this fourth day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and third year of the Independence of the United States.

[SEAL.] (Signed) JOE GARIDEL,
Deputy Clerk.

Return on writ of mandamus to the City of New Orleans, through its proper officer, and the Mayor and Administrators of the City of New Orleans.—Filed 5th Dec., 1878.

Received December 4th, 1878, and on December 5th, 1878, I served a copy of the within writ of mandamus and petition on the City of New Orleans, through I. W. Patton, mayor, in person, and on I. W. Patton,

mayor, personally, and on A. H. Isaacson, administrator of finance, in person, and on John Glynn, jr., administrator of accounts, in person, and on Washington Marks, administrator of assessments, through Theodore Marks, his chief clerk, in person, and on J. D. Houston, administrator of improvements, personally, and on J. Henry Behan, administrator of commerce, in person, and on E. R. Chevalley, administrator of
99 water works and public buildings, in person, and on Pat. Meallie, administrator of police, in person.

Returned same day.

(Signed) S. W. COTTON,
Deputy Sheriff.

Return and answer of the mayor and administrators of the city of New Orleans.—Filed 9th Dec., 1878.

3rd dist. court for the parish of Orleans.

STATE, EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25495.

Now comes the mayor and administrators of the city of New Orleans, who, for exception and answer to the order herein issued upon them to show cause why they should not comply with the demand of the relators, say:

1st. That said petition discloses no cause of action in this: (A) that it contains contradictory allegations; (B) that it alleges that taxes have been assessed and collected to pay relators' judgments, but have been wrongfully divested to other purposes, under which allegations relators would have a cause of action in damages against the officers of the city and the sureties on their official bonds, under section 4 of act No. 5 of extra session of 1870, but under which allegations they are not en-
100 titled to the writ of mandamus as prayed for; (C) that inasmuch as relators aver that all has been done by the city which legally ought to have been done, they are not entitled to the writ of mandamus; (D) that relators do not allege any amicable demand upon your respondents to perform the act which relator herein seeks to force by mandamus, nor do they allege any refusal on the part of these respondents so to act. Wherefore respondents pray that these exceptions be maintained, and that relators' demand be rejected, with costs.

And should said exception be overruled, and not otherwise, then for answer respondents say:

They deny all and singular the allegations in said petition contained, and specially deny that there has been any such diversion of funds as the relators allege.

Further answering, respondents say that the taxes levied and assessed, as averred by relators, out of which relators are by law required to be paid, are now in process of collection; that because of the delinquency and default of many tax-payers, the City of New Orleans has been compelled to institute judicial proceedings to enforce the collection of said taxes, which

proceedings said city is now prosecuting with due diligence, and that pending these proceedings relator is not entitled to anticipate the result and to cause an additional levy to be made for the purpose of paying the judgments owned by them.

101 That the revenues of each year of the City of New Orleans are devoted, by section 3rd of act No. 30 of the extra session of 1877, to the payment of the expenditures of that year, and that it is only such surplus as may remain after the payment of the expenses of any year that can be legally appropriated to the payment of the indebtedness of any former year; that inasmuch as the taxing power of the City of New Orleans is limited to one and a half (1½) per cent., the anticipated revenues of said city for the year 1879 from all sources will not be more than sufficient to pay the necessary current expenses for the year 1879, and no surplus will remain which can be applied to the extinguishment of relators' judgments; that the city has in her treasury no surplus of any kind or nature whatever from which appropriations could be made to pay said judgments; that the assessed value of all taxable property in the city of New Orleans for the year 1879, and for two years thereafter, is only one hundred and eleven millions of dollars, or thereabouts; that the city is encumbered with a debt exceeding twenty-one millions of dollars in amount; that owing to these facts and to the provisions of law prohibiting the city from making any appropriations in excess of the actual revenue for any year and prohibiting her from imposing a tax exceeding 1½

102 per cent., the revenue which will accrue to the city during the year 1879 will hardly be sufficient to enable her to perform the necessary functions of government, which are paramount in importance and in right to the claims which relators have upon said city.

That there are registered judgments against the City of New Orleans exceeding five hundred thousand dollars in amount which are entitled to be paid by priority over the judgments of relators, and that for those reasons the budgeting of relators' judgments would be a vain thing.

Wherefore respondents pray that relators' demand be rejected, with costs.

(Signed) E. HOWARD McCALEB,
City Attorney for Respondents.

(Signed) E. H. FARRAR, *Of Counsel.*

Continuance on cause.—Extract from minutes 9th day December, 1878.

3rd dist. court for the parish of Orleans.

STATE, EX. REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25495.

This case came on this day for trial: Present, R. Mott, for relators; E. Howard McCaleb, city att'y, for respondents.

103 After hearing argument of counsel upon the exceptions of respondents till the expiration of the rule hour, the court ordered that this matter be continued for further argument to the 10th instant at 11 o'clock a. m.

Continuance on exceptions.—Extract from minutes 10th December, 1878.

3rd dist. court for the parish of Orleans.

STATE, EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25495.

The exceptions herein came on this day to be argued. Present, counsel for both parties. After hearing further argument of counsel till the expiration of the rule hour, the court continued the matter until to-morrow at 11 o'clock a. m.

Discontinuance of suit.—Extract from minutes 11th day December, 1878.

3rd dist. court for the parish of Orleans.

STATE, EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25495.

On motion of R. Mott, attorney for relators, it is ordered that this suit be discontinued at the costs of the relators.

104 *Certificate of clerk.*

STATE OF LOUISIANA:

I, Benjamin Armbruster, clerk of the third district court for the parish of Orleans, do hereby certify that the foregoing one hundred and forty-six (146) pages do contain a complete, true, and correct transcript of all the proceeding' had, of all the evidence adduced, and of all the documents filed in and on the trial of the cause entitled, State of La., ex rel. Folsom Brothers, vs. the Mayor and Administrators of the City of New Orleans, No. 25521 of the docket of said third district court for this parish.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on the first day of March, in the year of our Lord one thousand eight hundred and seventy-nine and in the 103 year of the Independence of the United States.

[SEAL.] (Signed) BEN. ARMBRUSTER, *Clerk.*

105 STATE OF LOUISIANA,
City of New Orleans:

Supreme court of the State of Louisiana.

STATE OF LOUISIANA, EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

Order for summary docket.—Filed March 5th, 1879.

The clerk of the supreme court will please put this case on the prefer-

ence docket, the same being a mandamus case and a summary case according to law.

New Orleans, March 5th, 1879.

(Signed) ROBERT MOTT,
For Relator.

Order to submit.—Filed March 25th, 1879.

Supreme court of Louisiana.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

The clerk will please submit this case on the briefs on file, if reached.

(Signed) ROBERT MOTT,
For Appellees.

Motion for additional transcript.—Filed M'ch 25th, 1879.

106 Supreme court of Louisiana.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

On motion of Robert Mott, of counsel of relators, and on suggesting a diminution of the record in this, that the clerk has omitted to copy into the transcript the final judgment rendered on the decree of this honorable court, with the mandate of this court in the case of Folsom Bros. *vs.* The City of New Orleans, altho' the same was offered in evidence on the trial of this case: It is ordered that the clerk of the third district court for the parish of Orleans do make and file in this court an additional transcript containing the said omitted evidence.

Service accepted.

(Signed) BEN. ARMBRUSTER,
Clerk 3d Dist. Court, parish of Orleans.

Motion for certiorari.—Extract from the minutes Tuesday, March 25th, 1879.

The court was duly opened.

Present: their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, Wm. B. Spencer, Edward D. White, associate justices.

107 Supreme court of Louisiana.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

On motion of Robert Mott, esq're, of counsel for plaintiffs, it is ordered

by the court that a writ of certiorari issue to the clerk of the lower court, commanding him to correct and complete the transcript of appeal in this case in compliance with the requirements of the written motion on file, and to return the whole properly certified to this court.

Supplemental transcript X.—Filed March 25th, 1879.

Supreme court of Louisiana.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR AND ADMINISTRATORS OF THE CITY of New Orleans. } No. 7447.

Supplemental transcript to be filed in the honorable supreme court of the State of Louisiana, in the suit entitled, State of Louisiana, ex rel. Folsom Brothers, *vs.* The Mayor and Administrators of the City of New Orleans, No. 25521 of the docket of the third district court for the parish of Orleans.

Opinion and decree of the supreme court of the State of La., in the
108 *matter of "Folsom Brothers vs. the City of New Orleans," No 5300 of said supreme court of Louisiana, and No. 3510 of th late superior district court for the parish of Orleans, transferred by law t the third district court for the parish of Orleans, under the No. 24751, of said third district court of this parish.—Filed 28th June*, 1877.

Supreme court of the State of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *December 18th*, 1876.

FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 5300.

Appeal from the superior district court for the parish of Orleans.

Mr. Justice Leonard delivered the opinion and decree of the court, in the words and figures following, to wit:

The plaintiffs bring this suit against the city for damages to their property, caused by a mob on the night of May 6th, 1873. Section 2453 of the Revised Statutes, declares that—

The different municipal corporations of this State shall be liable for the damages done to property by mobs or riotous assemblages in their respective limits.

109 The liability of cities and town' under the provision of this statute is no longer an open question. (Williams *vs.* City of New Orleans, 23 A, 507.)

The present case was tried by a jury in the court below, who gave the plaintiffs fifteen thousand dollars. They thought the sum too small and have appealed. The city appears to be fully satisfied with the verdict.

There seems to be no question about the occur'ence of the riot, and that

plaintiffs' store was broken into and pillaged by the mob. The amount of the damage sustained is the only matter in controversy. Mr. George Folsom, one of the plaintiffs, swears that the firm sustained loss by the riot to the amount of twenty-six thousand and eight hundred and fifty-eight dollars, as detailed in an itemized statement annexed to the petition, that this statement was made out immediately after the riot, and that only those articles were put down which were known to have been taken away. The values charged are the wholesale cash prices.

Mr. Folsom further testifies that the actual damage sustained by the firm was greater than the amount charged to the city, and that the articles taken away could not be replaced for that sum at the time of the riot. Mr. Thomas T. Moore, an employee of plaintiffs, swears that every
110 item charged to the city was actually lost by the firm on the night of the riot.

Mr. W. R. B. Turner, another employee, testifies that he assisted in making up the statement, and that the amount charged is less than the actual loss.

We regret that the representatives of the city did not see proper to institute a more careful scrutiny into a matter which involved the payment by the taxpayers of so large a sum of money.

As it was they did not call a single witness, nor did they apparently make any effort to ascertain for themselves the amount of the city's liability. It might have been well also to have cross-examined the plaintiffs and their clerks more vigorously with regard to each item of loss charged in the statement. As it is, we have no alternative but to accept the uncontradicted testimony of these witnesses as accurate and conclusive. It is therefore ordered, adjudged, and decreed that the verdict of the jury be set aside, that the judgment of the superior district court be annulled, and that plaintiffs recover of defendant, the City of New Orleans, the sum of twenty-six thousand eight hundred and fifty-eight dollars, with 5 % interest from May 16th, 1873, and costs of both courts.

A true copy.

(Signed) M. P. JULIAN,
Deputy Clerk.

111 *Motion and order to record decree of the supreme court.—Extract from minutes Thursday, June 28th, 1877.*

3rd dist. court, parish of Orleans.

FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 24751.

On motion of Semmes & Mott, of counsel for plaintiffs, it is ordered that the decree of the supreme court of Louisiana rendered in this case be spread on the minutes.

Decree.

"It is ordered, adjudged, and decreed that the verdict of the jury be set aside; that the judgment of the superior district court be annulled, and

that plaintiffs recover of defendant, the City of New Orleans, the sum of twenty-six thousand eight hundred and fifty-eight dollars, with 5% interest from May 16th, 1873, and costs of both courts."

Certificate of clerk.

STATE OF LOUISANA:

Third district court, parish of Orleans.

I, Benjamin Armbruster, clerk of the third district court for the parish of Orleans, do hereby certify that the foregoing six (6) pages do contain a true and correct copy of the original proceedings had and now on file in this court in the matter of Folsom Brothers vs. City of New Orleans, No. 24751, of our said court, which said proceedings are now
112 copied in obedience to a writ of certiorari issued by the hon. supreme court to the clerk of this court, to be used as a supplemental transcript in the suit entitled State of La., ex rel. Folsom Brothers, vs. City of New Orleans, No. 25521 of the docket of said court, now on appeal to the supreme court.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at the city of New Orleans, on the 17th day of March, 1879, and in the 103rd year of the Independence of the United States of America.

[SEAL.] (Signed) BEN. ARMBRUSTER, *Clerk.*

Continuance.—Extract from the minutes March 25th, 1879.

The court was duly opened. Present: their honors Thomas C. Manning, chief justice; and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS, *vs.* THE MAYOR & ADMINISTRATORS OF THE CITY of New Orleans.	7447.	Supreme court of La.

This case was ordered by the court to be continued with preference.

113 *Order to submit.—Filed 22d April, 1879.*

Supreme court of the State of Louisiana.

STATE OF LA., EX REL. FOLSOM BROTHERS, *vs.* MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.	No. 7447.

To the clerk:

If reached and I am absent please submit.

(Signed) ROBERT MOTT.

N. ORLEANS, 22*d April*, 1879.

Continued with preference.—Extract from the minutes Tuesday, April 22d, 1879.

The court was duly opened. Present: their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.
No. 7447. Supreme court of the State of La.

This case was ordered by the court to be continued with preference.

Order: Case submitted.—Extract from the minutes Tuesday, May 6th, 1879.

114 The court was duly opened. Present: their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.
No. 7447. Supreme court of the State of Louisiana.

This case is submitted to the court by counsel for parties in interest upon the briefs and papers now on file.

Order to reinstate.—Extract from the minutes Wednesday, May 7th, 1879.

The court was duly opened. Present: their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.
No. 7447. Supreme court of the State of Louisiana.

115 It is ordered by the court that the order of the 6th instant permitting the submission of this case be rescinded, and that said case be reinstated on the docket for trial in due course.

Continued with preference.—Extract from the minutes Tuesday, November 4th, 1879.

The court was duly opened. Present: their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.
No. 7447. Supreme court of the State of La.

This case was called for trial. Whereupon, on motion of Robert Mott,

esq., of counsel for plaintiffs, the court ordered the same to be continued with preference.

Order: Case submitted.—Extract from the minutes Tuesday December 2d, 1879.

The court was duly opened. Present: their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, Wm. B. Spencer, Edward D. White, associate justices.

116 STATE OF LA. EX REL. FOLSOM BROTHERS, *vs.* MAYOR & ADMINISTRATORS OF THE CITY of New Orleans. } No. 7447. Supreme court of the State of Louisiana.

This case was called for trial, and having heard argument from Robert Mott and Thomas J. Semmes, of counsel for plaintiffs and appellees, and from E. Howard McCaleb, esq., city attorney, on behalf of the defendants, appellants herein, the court took said case under advisement upon the briefs now on file for both parties.

Order: Case reinstated for argument.—Extract from the minutes Monday, January 19th, 1880.

The court was duly opened. Present: their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS, *vs.* MAYOR & ADMINISTRATORS OF THE CITY of New Orleans. } No. 7447. Supreme court of the State of Louisiana.

This cause is reassigned for oral argument, and the attention of counsel is called to the 15th section of the act of 1872, to be found on page 127 of the acts of that year.

117 *Order: Case submitted.—Extract from the minutes Friday, March 5th,* 1880.

The court was duly opened. Present: their honors Thomas C. Manning, chief justice, and Robert H. Marr, AlcibiadeDe Blanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS, *vs.* MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447. Supreme court of the State of Louisiana.

This case was called for trial, and having heard argument from Thomas J. Semmes, esq., of counsel for plaintiffs and appellees, the court took said case under advisement upon the briefs and papers now on file.

Motion and order to fix.—Extract from the minutes Tuesday April 20th, 1880.

The court was duly opened. Present: their honors Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

STATE OF LA., EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.
No. 7447. Supreme court of the State of Louisiana.

118 On motion of Robert Mott and Thomas J. Semmes, esquires, of counsel for the plaintiffs, appellees, it is ordered by the court that this cause be reassigned and set down for trial on Saturday, the 24th inst., immediately after the State cases on the docket of that day.

Order: Case submitted.—Extract from the minutes, Saturday April 24th, 1880.

The court was duly opened. Present: their honors Edward Bermudez, chief justice, and Félix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.
No. 7447. Supreme court of the State of Louisiana.

This case was called for trial, and having heard argument from Thomas J. Semmes and Robert Mott, of counsel for the plaintiffs and appellees, and from E. Howard Farrar, esq., of counsel for the defendants and appellants herein, the court took said case under advisement upon the briefs now on file for both parties.

119 *Opinion.—Filed May 17th, 1880.*

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR AND ADMINISTRATORS OF THE CITY of New Orleans.
No. 7447. Supreme court of La.

Folsom Bros., relators herein, are holders of two judgments against the City of New Orleans, the same being for damages done to their property by a mob or riotous assemblage within the limits of said city in 1873, for which the city was liable under section 2453 of the revised statutes. One of said judgments, for $2,000, became final on July 3d, 1874, the other, for $26,858.00, became final in December, 1877. They were properly registered in the office of the administrator of public accounts on January 15th, 1876, and January 15th, 1877, respectively, in accordance with the provisions of act No. 5, extra session of 1870. In their petition herein they state the foregoing facts, and further aver that other judgments against

the city to a large amount had been registered prior to their own, and that it was the duty of the city officers to place them all on the budget, and to levy and collect taxes to pay them; that said city officers had failed and refused to perform said duty; that being prohibited by law from issuing executions upon their said judgments, they are without other remedy except through the levy of taxes for their payment, and that the refusal of the city to levy such taxes deprives them of all remedy, and is in violation of their vested rights and of the constitutions and laws of the United States and of the State. They prayed for a writ of mandamus commanding the proper officers of the city to place upon the budget for the year 1879 and all succeeding years until the same be fully paid, all the registered judgments, including those of relators, and to impose taxes, in addition to all other taxes required for other expenses, to an amount sufficient to pay and satisfy the whole of said registered judgments.

The officers of the city made returns substantially that, under the provisions of act No. 31 of 1876, the power of the city to levy taxes for any purpose whatever, was limited to one and one-half per cent. upon the assessed value of taxable property; that the necessary alimony of the government must be provided for before debts can be paid; and that the revenues derived from taxation to the aforesaid limit of the law and from all other sources would not be sufficient to provide for the said necessary alimony of the city government.

The learned judge of the lower court was of opinion that under section 19 of act No. 7 of 1870, which was in force in 1873, at the time when the causes of action upon which relators' judgments were rendered originated, the taxing power of the city was only limited to one and three-quarters per cent.; that this taxing power so fixed constituted the sole remedy for the enforcement of their claims; that the right to diminish or destroy this taxing power involved the diminution or destruction of the sole remedy of relators, and could not be exercised to the prejudice of relators' vested right to such remedy.

The court therefore made the mandamus peremptory so far as to order the budgeting of all judgments as prayed for in succeeding years; and that with a view to the payment thereof, respondent be ordered to levy taxes to the extent of one and three-quarters per cent., as prescribed by section 19 of act No. 7, of the extra session of 1870.

From this judgment, which was signed on February 5th, 1879, the city took this suspensive appeal.

The first thing that attracts judicial cognizance on the very face of this record, is that any decree rendered by us herein, ordering the levy of taxes by the city of New Orleans, must operate prospectively only. The past is beyond recall and beyond remedy. If we should affirm the decree appealed from the effect would be to order the City of New Orleans in its next and succeeding tax levies to impose and collect a tax of one and three-quarters per cent. until all the judgments referred to in the decree are settled. The mere statement of this proposition irresistibly recalls the provision of article 209 of the constitution of 1879, which provides that no parish or municipal tax for all purposes whatever, shall exceed ten mills on the dollar of valuation.

It is impossible to conceive of any form of expression in which the in-

tention of the framers of the constitution to restrict absolutely the power of municipal taxation within the limit of ten mills on the dollar, could be more positively asserted.

A tax levied by the City of New Orleans is unquestionably a "municipal tax." Such a tax levied for the purpose of paying debts is yet a tax levied for a purpose, and falls within the all-embracing expression, "all purposes whatever," and when thus much has been said it involves the inevitable conclusion that if the constitutional provision is to be operative and is not restrained in its effect by some higher authority, the city has not the power to levy a tax in excess of ten mills on the dollar, and we cannot compel the city to exercise a power which it does not possess.

Attempt is made by counsel for relator to restrict the limitation of this constitutional provision to taxation for the ordinary purposes of government. If such had been the intention of the framers it would have been easily and naturally expressed. The language used not only does not convey, but absolutely excludes, such construction of its meaning. It is besides notorious that the object of the limitation was not merely to
123 restrain the extravagance of administrators of municipal corporations, but to relieve property from the burden of excessive taxation.

The cases relied on to impose this restrictive meaning upon the clause referred to are without application.

McCracken vs. San Francisco, 16th California, 591, applied to an article of a city charter providing that the common council shall not create nor permit to accrue any debts or liabilities which shall exceed $50,000.00 over and above the annual revenues of the city, and held that this only applied to voluntary acts or contracts of the council creating liabilities, and not to liabilities cast upon her by the law, independent of any contract or permission of the council. Such appears to us to be the only possible meaning that could be derived from the language used in the charter itself, and we see nothing in that case that touches the one at bar.

The case of Butz vs. Muscatine, 8th Wallace, 575, has still less application. There it is true there was a provision in the charter of the city of Muscatine limiting the power of taxation to one per cent., but there were also coexisting provisions in the general laws of the State requiring corporations against which judgments had been rendered, after execution returned unsatisfied, to levy a tax as early as practicable to pay off such judg-
124 ments. In effect, the court merely held that the restriction in the charter did not repeal said general laws, and did not apply to the duty of corporations thereunder to levy taxes to pay judgments. It is evident we have here no such coexisting statutes to be interpreted together, nor was the language of the Muscatine charter so broad as that of our constitution.

Moreover, in the subsequent case of U. S. vs. Supervisors, 18 Wall., 71, the decision in the above case was substantially overruled. Having thus determined the meaning of this constitutional provision, let us now examine the power of the constitutional convention to pass such a provision.

The learned judge of the lower court, in his able opinion, was dealing with questions very different from those which we are now discussing. He was considering the effect of mere legislative acts. He held that inasmuch as at the time when the obligation sought to be enforced by relators origi-

nated the city had the power to levy a tax of one and three-quarters per cent., and as the sole remedy for the enforcement of said obligation was through the exercise of said taxing power, therefore "if that power could be diminished by subsequent legislation, it might with the same propriety be withdrawn altogether." That he said could not be done. Why? Because, in his own language, "it would operate a divestiture of the remedial right which had existed in the relators." In other
125 words, the judge held that the subsequent legislative acts restricting the city's power of taxation could not apply to relators' right previously existing, because such application would operate to divest a vested right, in violation of Art. 110 of the constitution of the State there in force.

It is unnecessary for us to review the decision of the district judge on this point, because the limitation on the power of the legislature imposed by the constitution of 1868 has no force over the power of the constitutional convention.

A constitution framed by a convention of the people, especially after having been submitted to and ratified by a direct vote of the people, is the ultimate expression of the will of the sovereignty itself. Its provisions may control with plenary power all private and social rights, and all existing laws and institutions, and may even violate the most fundamental rules of justice, provided only they do not conflict with the provisions of the Constitution of the United States, which, with regard to the subjects covered by them and to those subjects alone, form the paramount law of the land. No court has the right to question the validity of any provision of a State constitution, however unwise, impolitic, or even unjust it may be, upon any other ground whatever than that it violates the
126 Constitution of the United States (Cooley on Const'l Lim., on p. 34). It follows, therefore, that the provision of the constitution of 1879 must have full operation and effect against all persons and against all rights, except so far as its operation is restrained by the Constitution of the United States. It follows, to come more directly to the exact point at issue here, that no person can require the City of New Orleans to levy a greater tax than one per cent. unless he can establish a right in himself to require the levy of such higher tax, and unless he can also show that said right is so protected by the Constitution of the United States that it could not be taken away by any action of the State. If the State can destroy such right it has destroyed it by this provision of its constitution.

To begin with, it is settled, by an uninterrupted current of authorities, that a State may pass laws divesting vested rights without infringing the Constitution of the United States.

Charles River Bridge vs. Warren, 11 Pet., 420.
Watson vs. Mercer, 8 id., 88.
Sutterlee vs. Mathewson, 2 id., 413.
Railroad Co. vs. Nesbitt, 10 How., 395.
Matter of Oliver Lee and Co.'s Bank, 21 N. Y., 9.

The only provision' of the U. S. Constitution which could be invoked as protecting relators' alleged right here are—
127 1st. The provision forbidding a State to pass any law impairing the obligation of a contract.

2nd. The provision of the 14th amendment forbidding the State to "deprive any person of life, liberty, or property without due process of law."

The first provision has no application here. Relator has no right of any kind arising from a contract, express or implied, and no other rights are within the protection of this provision. It is settled that claims arising from a tort, and not from a contract, are not so protected.

Dash vs. Paukleck, 7 John., 477.

Amy vs. Smith, 1 Litt., 326.

Thayer vs. Seavey, 11 Me., 284.

The position of counsel that this is not an obligation arising from a tort, but an obligation imposed by law on the city in favor of a third person and in the nature of a stipulation four autrui accepted by such third person, and therefore equivalent to a contract, is not sustained by any authority. The only case in which we have found that question adverted to holds distinctly that "those rights which the law gives to, or obligations which it imposes upon persons, in certain relations, independently of any stipulations which the parties themselves have made" are not within the protection of this clause.

Robinson vs. How, 13 Wis., 341.

We are, however, unable to perceive any distinction between the
128 obligations arising under section 2453 of the revised statutes and those arising under the articles of the civil code relative to offenses and quasi offenses. It merely expressly extends to municipal corporations that responsibility for damage occasioned by their fault or negligence, or by the fault or negligence of their servants or overseers, which rests upon natural person under article 2315, 2316, and 2320 of the civil code. It has been a subject of frequent judicial discussion and of contradictory decisions whether or not such responsibility would not attach, even in absence of such special statute, on the grounds that powers are granted to municipal corporations especially designed to enable them to preserve peace and order, and that it is their duty so to exercise such powers as to afford adequate protection to property against mobs and riots. It cannot be doubted that these principles are the underlying reasons of the statute. But, whatever may be the source of these obligations, it is plain they do not spring from contract. It is suggested, however, that whatever may have been the origin of relators rights against the city, his judgments at least are contracts and within the protection of this constitutional clause. We are unable to discover any principle upon which to base such a doctrine. In the early and leading case of Fletcher vs. Peck, 6 Cranch, p. 136, Chief Justice Marshall, in defining what is meant by the word contract
129 as used in this very clause, said: "A contract is a compact between two or more parties." In the later case of Green vs. Biddle (8 Wh., 92) the word contract, in the same connection, was defined to be "the agreement of two or more parties to do or not to do certain acts." It thus appears, from the decisions of the highest Federal tribunal, that the word "contract" as used in the Constitution is to be interpreted according to the meaning attached to it in ordinary language, and under all systems of law.

We are at a loss to perceive what features of such a contract attach to judgments as such. Far from being agreements or compacts between the

parties, they are usually the sequence of violent contests, and are imposed upon the losing party by a higher authority, against his will and protest. It has been distinctly held by high authority that "a judgment is not an agreement, contract, or promise in writing."

Todd vs. Crumb, 5 McLean, 172, the Supreme Court of the United States has expressed its opinion upon the question in terms which, though perhaps obiter, leave no doubt that the views here expressed by us would receive its sanction. It said: "It may be doubted whether a judgment not founded upon an agreement, express or implied, is a contract within the meaning of the constitutional prohibition. It is sometimes called by text writers a contract of record, because it establishes a legal obli-
130 gation to pay the amount recovered, and, by fiction of law, where there is a legal obligation to pay a promise to pay is implied. But it is not perceived how this fiction can convert the result of a proceeding not founded upon an agreement express or implied, but upon a transaction wanting the assent of the parties, into a contract within the meaning of the clause of the Federal Constitution which forbids any legislation impairing its obligation.

"The purpose of the constitutional prohibition was the maintenance of good faith in the stipulations of parties against any State interference. If no assent be given to a transaction no faith is pledged with respect to it, and there would seem in such case to be no room for the operation of the prohibition."

Garrison vs. City, 21 Wall., 203, these views are in harmony with the reasons and principles underlying the constitutional provision referred to, and we have no hesitation in adopting them. See also Forsyth vs. Marbury, R. M. Charlt., 324.

2nd. It is next contented that this restriction in the constitution of 1879 quoad the rights of relators violates that provision of the 14th amendment to the Constitution of the United States forbidding the State "to deprive any person of life, liberty, or property without due process of law."

It cannot be, nor to our knowledge has it ever been, contended
131 that this provision is the equivalent in meaning and effect of those provisions so common in State constitutions which forbade the passage of laws divesting vested rights.

It is not necessary for us to refer to the many limitations which were imposed by judicial interpretation upon the terms "vested rights," even under those express provisions. The 14th amendment, by its very terms, refers only to property, and no "vested rights" can "be included" within that term by any stretch of interpretation, except vested rights "in & to property," giving to the word property its broadest signification, so as to include everything susceptible of ownership, movable or immovable, corporeal or incorporeal. It cannot possibly be extended to remedies given merely for the enforcement of property rights. Still less can the power of taxation of a municipal corporation be a subject of ownership by any individual in such sense that the diminution or taking away thereof by the competent power can be considered as depriving him of his property.

The decisions bringing remedies, to a certain extent, within the operation of the Federal prohibition of laws impa'ring the obligations of contracts, by no means recognize any right of property therein, but rest upon the very different principle laid down in the leading case of Ogden vs.

Saunders, 12 Wheaton, 213, that "parties must be understood as making their contracts with reference to existing laws, and impliedly
132 assenting that such contracts are to be construed, governed, and controlled by such laws."

We have thus carefully examined every ground upon which the relators herein can possibly claim that their right to the remedy herein invoked is protected from the operation of the adverse provision of the State constitution.

We shall always be found ready to yield, and to enforce, obedience to the requirements of the Federal Constitution, but where those requirements are not violated we must, as mandatories of the State, recognize her constitution as our sole procuration, defining and limiting our powers, and we can neither do, nor direct to be done, nor permit to be done, anything in violation of the provisions thereof.

It is, perhaps, superfluous to say that the rights of contract creditors will be passed upon only when presented for our adjudication.

It is therefore ordered, adjudged, and decreed that the judgment herein appealed from be reversed, and that the mandamus prayed for be denied, relators paying costs of the lower court and of this appeal.

Final decree.—Extract from the minutes Monday, May 17th, 1880.

133 The court was duly opened. Present: their honors Edward Bermudez, chief justice, and Félix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

STATE, EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.
No. 7447. Supreme court of the State of Louisiana.

On appeal from the third district court for the parish of Orleans.

It is ordered, adjudged, and decreed that the judgment herein appealed from, be reversed, and that the mandamus prayed for be denied, relators paying costs of the lower court and of this appeal.

Petition for writ of error.—Filed May 27th, 1880.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.
No. 7447. Supreme court of the State of Louisiana.

To the honorable the supreme court of the State of Louisiana:

The petition of the State of Louisiana, on the relation of Folsom Brothers, a firm composed of George Folsom and Henry Folsom, with respect, represents:

That petitioners are advised and believe that there is manifest error to their prejudice on the final judgment rendered against them by
134 your honorable court in the suit of the State of Louisiaua, on the relation of Folsom Brothers, vs. The Mayor & Administrators,

No. 7447 on the docket, on the 17th day of May, 1880, and they irreparably are injured thereby, and petitioners desire to remove said *court* by writ of error into the Supreme Court of the United States, and they have prepared and tender herewith a bond with solvent security.

Wherefore petitioners pray that an order be granted allowing a writ of error, and that the proper citations be signed according to law, and for general relief.

(Signed) ROBERT MOTT &
THOS. J. SEMMES,
Att'ys of Plaintiffs.

Order.

Writ of error allowed. Bond for one thousand dollars approved.
New Orleans, May 27th, 1880.

(Signed) E. BERMUDEZ,
Chief Jutice, La.

Bond for writ of error.—Filed May 27th, 1880.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans.
} No. 7447. Supreme court of the State of Louisiana.

Know all men by these presents, that we, the State of Louisiana,
135 on the relation of Folsom Brothers as principals and Albert Baldwin as surety, are held and firmly bound unto J. W. Patton, the mayor, and the following administrators of the City of New Orleans, viz: A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; J. Henry Behan, administrator of commerce; E. R. Chevalley, administrator of water works & public buildings; Washington Marks, administrator of assessments; Joseph Collins, administrator of improvements; and P. Mealey, administrator of police, in the full and just sum of one thousand dollars, to be paid to the said Patton, mayor, and the said Isaacson, Glynn, Behan, Chevalley, Marks, Collins, and Mealey, administrators of the City of New Orleans, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 27th day of May, in the year of our Lord one thousand eight hundred and eighty.

Whereas, lately at a supreme court of the State of Louisiana, in a suit depending in said court, wherein the State of Louisiana, on the relation of Folsom Brothers, is plaintiff, and the Mayor and Administrators of the City of New Orleans is defendant, judgment was rendered against the said State of Louisiana on the relation of Folsom Brothers, and the said State of Louisiana, on the relation of Folsom Brothers, having obtained a
136 writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Patton, mayor, and to said Isaacson, Glynn, Behan, Chevalley, Marks, Collins, and Mealey, administrators of the City of New Orleans, citing and admonishing them to be and appear at a

Supreme Court of the United States, to be holden at Washington the 2nd Monday of October next:

Now the condition of the above obligation is such, that if the said State of Louisiana, on the relation of Folsom Brothers, shall prosecute said writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void else to remain in full force and virtue.

(Signed) STATE OF LA., ON THE RELATION OF FOLSOM BROTHERS. [L. S.]

(Signed) A. BALDWIN. [L. S.]

Approved.

E. BERMUDEZ,
Chief Justice of Supreme Court of Louisiana.

Writ of error.—Filed May 27th, 1880.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition
137 of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law & equity of the said State in which a decision could be had in said suit between the State of Louisiana, on the relation of Folsom Brothers, a firm composed of George Folsom and Henry Folsom, and The Mayor & Administrators of the City of New Orleans, wherein was drawn in question the validity the constitution and statutes of the State of Louisiana on the ground of the same being repugnant to the Constitution and laws of the United States, and the decision was in favor of the validity of the constitution and statutes of said State, and wherein a right was claimed under the Constitution of the United States, and the decision was against the right specially claimed or set up under such Constitution of the United States, a manifest error hath happened to the great damage of the said State of Louisiana, on the relation of Folsom Brothers, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United
138 States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 27th day of May, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Endorsed:) Supreme court of the State of Louisiana. The State of Louisiana, on the relation of Folsom Brothers, app'ts, vs. The Mayor & Administrators of the City of New Orleans, app'ees. Writ of error.

Copy of the writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 27th day of May, one thousand eight hundred and eighty.

(Signed) ROBERT MOTT,
Att'y of Plaintiff in Error.

Filed May 27th, 1880.

(Signed) FRANK WALL,
D'y Clerk.

139 *Certificate.*

STATE OF LOUISIANA:

Supreme court of the State of Louisiana.

I, George W. Dupré, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing one hundred and thirty-eight pages contain a full, true, and complete copy of the transcript of the proceedings had in the third district court for the parish of Orleans in a certain suit, wherein The State of Louisiana, on the relation of Folsom Brothers, was plaintiff, and The Mayor and Administrators of the City of New Orleans were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said defendants, which appeal is now on the files thereof under No. 7447.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the city of New Orleans this twelfth day of June, one thousand eight hundred and eighty, and in the one hundred and fourth year of the Independence of the United States of America.

[SEAL.] GEORGE W. DUPRÉ, *Clerk.*

140 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Isaac W. Patton, the mayor, and to the following administrators of the city of New Orleans, viz: Alfred H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; J. Henry Behan, administrator of commerce; E. R. Chevally, administrator of water works and public improvements; Washington Marks, administrator of assessments; Joseph Collins, administrator of improvements; and P. Meazley, administrator of police, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the State of Louisiana, on the relation of Folsom Brothers, a firm composed of George Folsom and Henry Folsom, plaintiffs, and the Mayor and Administrators of the City of New Orleans are defendants in error, to show cause, if any there be, why the judgment

rendered against the said State of Louisiana, on the relation of Folsom Brothers, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Edward Bermudez, chief justice of the supreme court of the State of Louisiana, this 27th day of May, in the year of our Lord one thousand eight hundred and eighty.

E. BERMUDEZ,
Chief Justice, La.

141 Service accepted for the defendants.
N. O., May 31st, 1880.

E. HOWARD McCALEB,
City Attorney.

(Indorsed:) United States. No. R. vs. Citation.

Marshal's return.

Received June 1, 1880, by the U. S. marshal, and on same day, month, and year I served a copy of the within writ of error on the within-named defendants in error, to wit: I. W. Patton, mayor of the city of New Orleans; Alfred H. Isaacson, administrator of finance for the city of New Orleans, John Glynn, jr., administrator of accounts for the city of New Orleans; Joseph Collins, administrator of improvements for the city of New Orleans; Washington Marks, administrator of assessments for the city of New Orleans; J. Henry Behan, administrator of commerce for the city of New Orleans; E. R. Chevally, administrator of water works and public buildings for the city of New Orleans; and Pat. Meallie, administrator of police for the city of New Orleans, by delivering to each a copy hereof in person in said city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Personally appeared before me, E. S. Curry, a deputy U. S. marshal in and for the district of Louisiana, and makes oath that he served a true copy of the within writ of error on the defendants in error herein named as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Subscribed and sworn before me June 12, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

(Indorsement on cover:) No. 239. The State of Louisiana, ex rel. Folsom Brothers, a firm composed of George Folsom and Henry Folsom, plff's in error, vs. The Mayor and Administrators of the City of New Orleans. Louisiana supreme court. Filed 10th July, 1880.

109-285

109-285

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~810~~ 527 ~~569~~ 84

THE STATE OF LOUISIANA, EX REL. FOLSOM BROTHERS, A FIRM COMPOSED OF GEORGE FOLSOM AND HENRY FOLSOM, PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 10, 1880.

rendered against the said State of Louisiana, on the relation of Folsom Brothers, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Edward Bermudez, chief justice of the supreme court of the State of Louisiana, this 27th day of May, in the year of our Lord one thousand eight hundred and eighty.

E. BERMUDEZ,
Chief Justice, La.

141 Service accepted for the defendants.
N. O., May 31st, 1880.

E. HOWARD McCALEB,
City Attorney.

(Indorsed:) United States. No. R. vs. Citation.

Marshal's return.

Received June 1, 1880, by the U. S. marshal, and on same day, month, and year I served a copy of the within writ of error on the within-named defendants in error, to wit: I. W. Patton, mayor of the city of New Orleans; Alfred H. Isaacson, administrator of finance for the city of New Orleans, John Glynn, jr., administrator of accounts for the city of New Orleans; Joseph Collins, administrator of improvements for the city of New Orleans; Washington Marks, administrator of assessments for the city of New Orleans; J. Henry Behan, administrator of commerce for the city of New Orleans; E. R. Chevally, administrator of water works and public buildings for the city of New Orleans; and Pat. Meallie, administrator of police for the city of New Orleans, by delivering to each a copy hereof in person in said city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Personally appeared before me, E. S. Curry, a deputy U. S. marshal in and for the district of Louisiana, and makes oath that he served a true copy of the within writ of error on the defendants in error herein named as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Subscribed and sworn before me June 12, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

(Indorsement on cover:) No. 239. The State of Louisiana, ex rel. Folsom Brothers, a firm composed of George Folsom and Henry Folsom, plff's in error, vs. The Mayor and Administrators of the City of New Orleans. Louisiana supreme court. Filed 10th July, 1880.

109-285

109-285

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~810~~ ~~537~~ ~~549~~ 534

THE STATE OF LOUISIANA, EX REL. FOLSOM BROTHERS, A FIRM COMPOSED OF GEORGE FOLSOM AND HENRY FOLSOM, PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 10, 1880.

SUPREME COURT OF THE UNITED STATES.

No. 810.

THE STATE OF LOUISIANA, EX REL. FOLSOM BROTHERS, A FIRM COMPOSED OF GEORGE FOLSOM AND HENRY FOLSOM, PLAINTIFFS IN ERROR,

vs.

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 7447.

Supreme court of Louisiana. Filed March 3d, 1879.
(Signed) FRANK WALL,
D'y Clerk.

STATE OF LOUISIANA:

Third district court, parish of Orleans. Hon. F. A. Monroe, judge.

STATE OF LOUISIANA, EX REL., FOLSOM Brothers.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

Robert Mott, esq., & Thos. J. Semmes, esq., att'ys for relator and appellee.

E. H. Farrar, esq., & E. Howard McCaleb, att'ys for respondent & appellant.

Returnable to the supreme court of Louisiana, on the 1st Monday in March, 1879.

2 *Petition for mandamus.—Filed Dec. 16th, 1878.*

3d dist. court, Orleans.

STATE OF LA., EX REL., FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

To the honorable the judge of the third district court for the parish of Orleans:

The petition of the State of Louisiana, on the relation of Folsom Brothers, a commercial firm domiciled in New Orleans, composed of George Folsom, who resides in the State of Mississippi, at Magnolia, and of Henry Folsom, residing in the city and State of New York, with respect, represents:

That on the 28th day of June, 1877, petitioners recovered a final judgment against the city of New Orleans, a municipal corporation of the State of Louisiana, in the suit No. 24751 in the third district court for the parish of Orleans, for the sum of twenty-six thousand eight hundred and fifty dollars, with interest and costs.

Petitioner further avers that Guilfoux and Lee recovered, on the 15th June, 1874, a judgment against the city of New Orleans, in the proceeding No. 2561 on the docket of the late superior district court for the parish of Orleans, of which court this is the successor, for the
3 sum of two thousand dollars and costs, which they thereafter transferred to relators, who became subrogated to all their rights against said city. That after the two aforesaid judgments became final, and in compliance with the statutes of the State of Louisiana, duly certified copies of the petitions, answers, verdict, and final judgments rendered therein, with the certificates of the clerks of said courts, that the said judgments were final, were filed with the proper officer of the said

city of New Orleans, with the view and intention of having the same registered according to the act No. 5 of the extra session of the legislature of the State of Louisiana, approved March 17th, 1870, and said two judgments were registered in the department of public accounts, the one in favor of Guilloux & Lee, under date of January 15th, 1876, and the one in favor of relators, under date of July 15th, 1877.

That the said judgments should by law have been put upon the budget of taxes to be levied and collected by said city, and should have been paid wholly, or in part, out of the taxes, so collected, and petitioner avers that the said judgments were, with other judgments against the city but partially upon the budget, and taxes were, to some extent, levied and collected, and should have been applied to the payment and extinction of said judgments, but were not so applied, and re-
4 lators have frequently demanded payment of said judgments of the proper officers of said city, without success, and no portion of said judgments has been paid to relators.

Petitioner further avers that there have been judgments obtained against said city, to large amounts which have been registered according to law, prior to those of relators, to a large amount, and, as the said city pretends, to the amount of five hundred thousand dollars, registered prior to the aforesaid judgments of relators.

Now, petitioner avers that by law it was the duty of the proper officers of the city of New Orleans, to place on the budget of taxes to be levied, all the judgments against said city levied, registered according to law, but the fact is that the whole of said registered judgments were not placed upon the budget, and for those that were so placed, taxes were not levied for the purpose of paying the same according to their priority, and in fact said judgments were but partially put upon said budgets, and when money was collected under the levy of taxes to pay said judgments it was not applied to the payment of said judgments, but to other purposes.

That the said city of New Orleans, through its officers and ad-
5 ministrators hereinafter named, has refused to place all of said registered judgments upon the budget, and to levy and collect taxes to pay the same as required by law, although thereto specially requested by relators. That by the laws of Louisiana relators cannot issue execution against the city of New Orleans on their aforesaid judgments, and they are remediless except through the levy of taxes for the payment thereof, and a refusal so to do, by said administrators, deprives relators of all remedy for the collection of said judgments, and is in violation of their vested rights, and of the Constitution and laws of the United States.

That relators have amicably demanded that the mayor and administrators aforesaid should pay relators said judgments, and should place said judgments and all the said registered judgments on the budget for 1879, and all succeeding years, in addition to the amount necessary to pay the expenses and other requirements of the said city, and to levy and collect taxes sufficient to pay said judgments, according to the priority of their registration, which has been refused. A copy of said demand is hereto annexed and made part hereof.

Wherefore petitioner prays that the city of New Orleans be ordered to show cause, on a day to be fixed by the court for that purpose,
6 why a peremptory writ of mandamus should not issue, ordering and compelling said city of New Orleans, and its proper officers, viz, Isaac W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, admin-

istrator of assessments; J. D. Houston, administrator of improvements; E. R. Chevally, administrator of water-works and public buildings; J. Henry Behan, administrator of commerce; Patrick Meallie, administrator of police, to place upon the budget for taxes for the year 1879, and all succeeding years, until the same be fully paid, all the judgments, including those of relators, which have been registered according to law, in addition to the other taxes to be levied according to law, and to impose taxes in addition to all other taxes required for other expenses, to a sufficient amount to pay and satisfy the whole of said registered judgments, and for general relief.

(Signed) ROBERT MOTT,
" THOMAS J. SEMMES,
Attorneys of Relators.

Affidavit of George Folsom for writ of mandamus.—Filed 16th December, 1878.

Personally appeared George Folsom, one of the relators herein, who, being sworn, says that the facts contained in the foregoing petition are true.

(Signed) GEO. FOLSOM.

7 Sworn to and subscribed before me, at this city of New Orleans, on the 13th day of December, 1878.

[SEAL.] (Signed) R. C. MOTT,
Notary Public in and for the Parish of Orleans, Louisiana.

Document annexed to and made part of petition.—Filed 16th December, 1878.

To the mayor & administrators of the city of New Orleans:

GENTLEMEN: I demand of you, in your capacities as mayor and administrators, that you place upon the budget for taxes for the year 1879, and all succeeding years, until the same be fully paid, according to the provisions of the act No. 5 of the extra session of the legislature of Louisiana of 1870, approved March 17th, 1870, the judgment for twenty-six thousand eight hundred and fifty dollars, interest and costs, recovered by Folsom Bros. against the city of New Orleans in the suit No. 24751, on the docket of the third district court for the parish of Orleans, and also the judgment obtained by Guilfoux & Lee against the city of New Orleans, for the sum of two thousand dollars and costs, in the suit No. 2561, on the docket of the late superior district court for the parish of Orleans, and that you also place on the budget of taxes to be

8 levied and collected for the year 1879, and all succeeding years until the same be paid, all the judgments registered according to the provisions of the act No. 5 of the extra session of 1870, approved March 17th, 1870, registered prior to the registration of the aforesaid judgment obtained by Folsom Bros. against the city of New Orleans, that is to say, those judgments registered prior to the 15th July, 1877, and that you place all said judgments on said budget in a sum or sums sufficient to pay all of the same, in addition to the budget for the other taxes to be levied according to law, and thus provide and collect a fund to pay and satisfy the whole of said registered judgments, according to law.

I make this demand for the purpose of compelling you to comply with the law, as preliminary to legal proceedings.

New Orleans, December 11th, 1878.

(Signed) ROBERT MOTT,
Att'y of Folsom Brothers.

Order for a writ of mandamus.

Let a writ of mandamus issue in this case as prayed for and according to law, commanding the mayor and administrators of the city of New Orleans to comply with the demand of the within petition, or show cause to the contrary, on Friday, the 20th day of December, 1878, at 11 o'clock a. m.

New Orleans, December 16th, 1878.

(Signed) F. A. MONROE, *Judge.*

9 *Writ of mandamus served on the city of New Orleans, J. W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; J. D. Houston, administrator of improvements; E. R. Chevally, administrator of water works and public buildings; J. Henry Behan, administrator of commerce; and Patrick Meallie, administrator of police, all of the city of New Orleans.—Issued 16th December,* 1878.

STATE OF LOUISIANA:

Third district court for the parish of Orleans.

THE STATE OF LOUISIANA. STATE EX REL. Folsom Bros. *vs.* MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

3rd dist. court for the parish of Orleans.

To the city of New Orleans, J. W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; J. D. Houston, administrator of improvements; E. R. Chevally, administrator of water works & public buildings; and Patrick Meallie, administrator of police, all of the city of New Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the third district court for the parish of Orleans, to comply with the demand of the petition, a duly certified copy whereof accom-
10 panies this writ, or show cause to the contrary on Friday, the 20th day of December, 1878, at eleven o'clock a. m.

Witness the honorable F. A. Monroe, judge of our said court, this 16th day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and third year of the Independence of the United States.

[SEAL.] (Signed) JOE GARIDEL, *Deputy Clerk.*

Return on writ of mandamus, served on the city of New Orleans, J. H. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; Patrick Meallie, administrator of police; J. Henry Behan, administrator of commerce; E. R. Chevally, administrator of water works and public buildings; and J. D. Houston, administrator of improvements; all of the city of New Orleans.—Filed 17th December, 1878.

Received December 16th, 1878, and on December 17th, 1878, served

copy of within writs of mandamus and copy of petition on the city of New Orleans, through J. W. Patton, mayor, in person, and on J. W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; Patrick Meallie, administrator of police; J. Henry Behan, administrator of commerce; E. R. Chevally, administrator of
11 water works and public buildings; J. D. Houston, administrator of improvements, in person.

Returned same day.

(Signed) JAMES GLYNN,
Deputy Sheriff.

Answer of respondents.—Filed 20th Dec., 1878.

3rd dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

And now come the mayor and administrators of the city of New Orleans, who, for answer to the order herein issued upon them to show cause why they should not comply with the demand of the relators, say:

They deny all and singular the allegations in said petition contained, except in so far as the same may be hereinafter specially admitted.

They specially deny that there ever has been any division of funds set apart for the payment of relators, such as is alleged in the said petition.

They specially deny that they have refused the amicable demand of relators to have their judgments budgeted, for the reason that so short a time intervened between the making of said demand and the institution of this suit, that defendants had no time to signify either their assent or dissent in the matter.

12 Respondents aver that they are honestly and earnestly endeavoring to administer and execute impartially all the laws that bear upon the performance of their duties, both with reference to the city and to its creditors, and that nothing would give them more pleasure than to find it consistent with their duty and within their power to comply with the demand of relators, and for reason why it is not in their power to comply with said demand, they aver:

That there is no money in the city treasury out of which relators can or ought to be paid, in whole or in part; that the power of the city to levy taxes is limited to one and one half per cent. on the assessed value of property; that the assessed value of property in the city does not exceed $111,000,000.00; that the revenues for the year 1879, that will accrue to the city from all sources whatsoever, will not be sufficient to pay the necessary current expenses of maintaining the existence of the city government, and that the alimony of the government is, by its very nature, a claim privileged upon the revenues, which must be provided for before any debts can be paid; that inasmuch as taxation up to the full limit allowed by law (the full amount of which respondents intend to impose), and all the other sources of revenue will not
13 be sufficient to pay the necessary alimony of the city government, and, inasmuch as all appropriations in excess of the actual reve-

nue of the city are prohibited by law, it is impossible for respondents to budget the judgments which relators seek to have budgeted, as the act of so doing would not only be in violation of law, but would be a vain and useless thing.

That, if by any possible contingency there should remain a surplus in the hands of the city after paying the necessary alimony of the government, respondents propose to apply that surplus to satisfaction of the judgments registered against her in the order of their registry, and that more than this respondents cannot be expected to be compelled to do.

Wherefore they pray that the demand of relators be rejected, with costs.

(Signed) E. HOWARD McCALEB,
City Attorney.

(Signed) E. H. FARRAR, *Of Counsel.*

Continuance of cause.—Extract from the minutes of 20th December, 1878.

3rd dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

This cause, assigned for this day, was called up, counsel for both parties being present, and after hearing the pleadings was ordered by the court to be continued to the 24th day of December, 1878,
14 at eleven o'clock a. m.

Continuance of cause.—Extract from the minutes 24th December, 1878.

3rd dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

By order of court this case is continued to the 10th proximo, at eleven o'clock a. m.

Testimony and notes of evidence taken in open court on the 10th day of January, 1879.—*Filed 10th January*, 1879.

3rd dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

Appearances: Mr. R. Mott, attorney for plaintiff; E. Howard McCaleb, attorney for defendant.

Offered in evidence by Mr. Mott, the notice served on the city which is annexed to the petition. And it is admitted that it was served on December 11th, 1878.

Also offers in evidence the judgment in the case of Folsom Bro hers vs. City of New Orleans, No. 24751, of the docket of this court.

Also the judgment in the case of Guilfoux & Lee vs. City of
15 New Orleans, recovered in the case No. 2561 of the docket of the late superior district court.

Mr. Mott also offers in evidence document marked A, with the endorsements thereon, and states as follows: "I instituted suit in the sixth district court, which I think is No. 9837, the record of which I now offer in evidence, entitled "State of La. ex rel. Folsom Brothers against City of New Orleans." While that suit was pending and coming on for trial I addressed to the then city attorney, B. F. Jonas, the following communication: (Communication marked A read to the court.) He having stated to me that he would produce on such a call any document I required of the city, I furnished this document to Mr. Jonas, and he returned it to me with the endorsements on the back, which is signed by him as city attorney, through N. T. N. Robinson, secretary, with the papers which I now offer in evidence, marked B, C, D, E, & F," as in answer to that claim I made.

The suit in the sixth district court was a mandamus for the purpose of compelling the city to budget and collect the taxes for the payment of the two judgments, which are the sub-matter of the present proceedings.

Mr. McCaleb objects to the introduction of the documents in evidence, on the grounds that those documents are not properly authenticated: that he knows nothing whatever of their nature; that they are
16 not properly authenticated and not admissible in evidence in their present form.

By the COURT. Objection overruled, on the grounds that it having been shown that the documents in question emanated from the defendant in this proceeding, no objection having been made on the ground of irrelevancy, the court considers it competent to offer them in evidence as against them.

(To which ruling of the court counsel for defendant reserves a bill, and takes this bill of exception.)

Mr. Mott now offers in evidence the proceedings in the case No. 25495 of the docket of this court.

Mr. JOHN GLYNN, jr., being sworn, says:

By Mr. MCCALEB:

Q. What position do you occupy at the present time?

A. I am administrator of public accounts of the city of New Orleans.

Q. How long since you took possession of that office?

A. On the 18th of November last.

Q. Was that the day on which the present city administration went into possession of the city offices?

A. Yes, sir.

Q. Please state the amount of taxable property in the city of New Orleans.

A. One hundred and eleven million dollars, I think. I have not got the exact amount.

17 (Document marked G shown witness and is offered in evidence.)

By Mr. MOTT. Counsel for defendant have offered in evidence document marked G in connection with the testimony of Mr. Glynn. The same was objected to by counsel for relator, on the ground that it is not competent for the defendant to show by testimony, either oral or

documentary, that the property of the city and the rate of taxation allowed by law be such as to prevent the levy of taxes for the payment of judgments obtained in favor of and belonging to relator; that the rights of the relator are vested, and it is not competent for the city, by sharing a less value of the property that that which the taxes will cover, for the purpose of defeating the collections of the debt from the city, when the remedy allowed by law at the time the judgments were obtained, because the right to call upon the city for the purpose of levying a tax for the payment of said judgments. The court overrules the objection on the ground that it goes more to the effect than to the admissibility of the evidence; the question after all to be determined being the power of the legislature to limit the rate of taxation when called in question, under act providing the method of the satisfaction of judgments against the city.

Q. Is that list marked G correct?

18 A. Yes, sir; except the taxes of the New Orleans Gas Light Company; that is not included.

Q. Is it incomplete to that extent?

A. Yes, sir.

Q. This slip I hand you does contain the correct value of the taxable property as from the budget?

A. Yes, sir; as adopted last Tuesday week finally.

(Slip from the newspaper offered in evidence.)

Q. That is from the budget of receipts you have adopted for the ensuing year?

A. Yes, sir.

Q. Have you with you the budget of expenditure for that year?

A. I have a draft from the budget; it will come up for final adoption on Tuesday next; it is now pending; it has been acted upon favorably by the committee of the whole.

(Document marked I offered in evidence; a copy to be produced.)

(Counsel for relator makes the same objection as before to the admissions of all this evidence; the court's ruling being the same.)

Q. Have you a copy of the judgments rendered and registered in your department against the city of New Orleans?

A. Yes, sir.

Q. Is the list you have a correct list?

A. Yes, sir.

(List marked J offered in evidence, copy to be produced.)

Q. Has the council, in making their annual budget, estimated

19 the receipts for the year at the rate of ninety per cent. on the budget of the previous year?

A. Yes, sir; that is with ten per cent. struck off as per requirements of the legislature.

Q. Are the amounts appropriated here and assessed absolutely necessary for the running of the government and paying the interest on the bonded debt?

A. Absolutely so.

Q. How stands the judgment appropriations or budgets of previous years?

A. It is overdrawn.

Q. To what extent?

A. I am investigating the matter now; I think to the extent of sixty thousand dollars.

Q. Is there any money in the city treasury to pay those judgments of relators, Folsom Brothers and Guilfoux?

A. No, sir; the amount of judgments is overdrawn for the years 1876, 1877, and 1878.

Q. At what rate have you levied taxation on taxable property?

A. One and a half per cent.

Q. The extreme limit under act of 1870?

A. Yes, sir.

Q. Will there be any surplus over and above that amount?

A. I cannot say at present.

Q. Taking from the estimated receipts of the previous years?

A. The previous years are overdrawn.

20 Q. Have the expenses been reduced in the different departments?

A. Yes, sir.

Q. Can you state to what rate?

A. It was reduced not only in the various departments, but in contracts which have some time to run; in order to make the budget of the expenses we were compelled to make a reduction of nearly twenty per cent., as well as under the contracts. In the New Orleans Gas Light Company, the fire department, and the Jefferson City Gas Light Company, it was necessary to get a reduction in order to balance the budget of expenditures with the budget of receipts.

Q. These amounts or appropriations in this budget of expenses, are they absolutely necessary to pay the interest on the bonded debt and the expenses of the city?

A. Yes, sir; absolutely so.

By Mr. MOTT:

Q. Why did you appropriate ten thousand dollars to the payment of the judgments, if the revenues derived by this one and a half per cent. is not more than enough to pay the expenses of the city and the interest on the bonded debt?

A. We wanted to provide, to the extent of our power, something for account of judgments and carry through our administration. We got it by making those reductions in contracts, &c., and we thought it absolutely necessary to provide for judgments to some extent; we

21 could not go beyond that figure.

Q. I understood you to say that the revenue derivable from taxation according to the amount that you are allowed to assess and collect, this one and a half per cent. upon the assessed value of the property, is more than sufficient to pay the expenses of the city and the interest on the bonded debt; you now state that you have by management been enabled to reduce the expenses of the city to such an extent as to allow you to pay on judgments ten thousand dollars?

A. Yes, sir.

Q. How many judgments will that pay?

A. It will pay six, I think; the first judgments were for small amounts; the list of registered judgments will show.

Q. The third judgment on the list is ten thousand dollars?

A. That is not decided yet, it is simply at issue.

Q. I see on this list of registered judgments, figures in pencil, were they intended to be before the court also?

Q. Those figures refer to some memoranda.

Q. Then the list is not an accurate list of the judgments registered at that time?

A. Yes, sir.

Q. Then the words and figures in pencil are intended as a portion of this statement?

A. Yes, sir.

22 Q. You say that this judgment on this list is not decided yet (for ten thousand dollars)?

A. There is some litigation connected with it; I will state that it has been almost impossible for me to familiarize myself with all those different things in the short time that I have been in office; the clerk can make some explanation about that.

Q. I see the seventh judgment of John Folwell is twelve thousand five hundred and twenty-four dollars and ninety cents, do you know anything about that?

A. No, sir; nothing special about the merits of the judgment.

Q. I understood you to say distinctly of your own knowledge that it requires the entire collection of all the taxes to be assessed for 1879 to pay the running expenses of the city and to provide ten thousand dollars for judgments?

A. Yes, sir; it can only be done by the collection of all the taxes assessed, less the ten per cent. provided by law; in other words, we could not very well have appropriated more than ten thousand dollars from the revenues of 1879 to provide for judgments without cutting down all the departments beyond a living rate.

Q. Or without going beyond one and a half per cent.?

A. Yes, sir.

Mr. CUMMERFORD being sworn and examined.

By Mr. McCALEB:

Q. What position do you fill?

23 (Mr. Mott objects on the same ground as before. Same ruling of the court.)

A. I am legal process clerk in the department of public accounts.

Q. How long have you filled that position?

A. About six years.

Q. Look at the statement I now hand you.

A. It is a statement showing the payment of judgments against the city of New Orleans from January 1st, 1875, how paid, whether in cash or scrip.

Q. How much has the city of New Orleans paid towards the extinguishment of judgments against the city?

A. There is $390,251 $\frac{24}{100}$ dollars, which includes $247,445.09 paid in cash, and $98,177.60 which was paid in scrip, including partly that amount which was extinguished by the issuance of water works stock, and $39,600.00 funded in premium bonds. There was a judgment rendered in favor of Klein in the United States circuit court for $89,600.00 of matured railroad bonds in 1874. The city allowed him to use thirty-nine bonds after he had registered his judgment, and $5,688.50 was paid to Marchand in coupons, in which he reserved his rights as a coupon holder, that he had judgments rendered in his favor; they fell due and were cancelled by the city.

Q. How does the budget of expenditure now compare with those of previous years, is it less or greater; I am speaking of the whole

24 budget, the difference between the whole budget of 1878 and 1879, what is it?

A. There is a difference in the neighborhood of four hundred thousand dollars less this year, or in that neighborhood.

(Budget of expenditures and the budget of receipts for the last year to be furnished.)

(Document marked K offered in evidence.)

Judgment in the case of Folsom Bros. vs. City of New Orleans, No. 3510 of the late superior district court, being No. 24751 of the third district court for the parish of Orleans, to which court it was transferred by law, offered in evidence by counsel for plaintiff.—Filed 10th January, 1879.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

DAVID FOLSOM BROS. vs. CITY OF NEW ORLEANS. } No. 3510.

This case came on this day for trial by jury.

Semmes & Mott for plaintiffs.

A. C. Lewis for the city of New Orleans.

The following named jurors were then empanelled, called, and sworn, to wit: William Fernandez, foreman; François Poree, Joe Duch, Othella Remoey, Wm. Maurice, Joe Adams, Daniel Sanders, John Wesley, Arthur P. Navarre, John Davis, David Jones, Jean Marseille.

After hearing pleadings, evidence, and counsel, the jury re-
25 ceived the charge of the judge and then retired to deliberate; when, after deliberation, the jury returned into court and, through their foreman, rendered the following sealed verdict, to wit: "We, the jurors, find a verdict in favor of plaintiff in the sum of fifteen thousand dollars ($15,000.00)."

Whereupon the court considering the verdict of the jury, the same was ordered to be recorded.

It is ordered, adjudged, and decreed that there be judgment in favor of the plaintiffs, David, Henry, and George Folsom, composing the commercial firm of Messrs. Folsom Bros., and against the city of New Orleans, for the sum of fifteen thousand dollars ($15,000.00) with legal interest from judicial demand.

Judgment rendered April 9th, 1874, and signed April 20th, 1874.

(Signed) JACOB HAWKINS, *Judge.*

Judgment in the suit of J. Guilfoux & L. E. Lee vs. City of New Orleans, No. 2561 of the late superior district court for the parish of Orleans, offered in evidence by counsel for plaintiff on the trial of the cause No. 25521 of the 3rd district court.—Filed 10th January, 1879.

STATE OF LOUISIANA:

Superior district court for the parish of Orleans.

J. GUILFOUX & L. E. LEE vs. CITY OF NEW ORLEANS. } No. 2561.

26 The jury case herein assigned for this day for trial came on.

R. Shackelford and George W. Sadler for plaintiffs; A. C. Lewis for defendant.

After hearing pleadings, evidence, and counsel, and after receiving the charge of the court, the jury retired to deliberate upon their verdict.

And, after mature deliberation, the jury returned into court with the following verdict:

The jury in this case renders verdict for plaintiffs for two thousand dollars.

(Signed) JOS. McELROY,
Foreman.

And the said jurors having all agreed that this verdict having been agreed to by them, the court ordered the same to be duly recorded.

In this case the court, considering the verdict of the jury herein rendered and duly recorded:

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiffs, J. Guilfoux and L. E. Lee, and against the city of New Orleans, for the sum of two thousand dollars with costs.

Judgment rendered June 15th, 1874.

Judgment signed July 3d, 1874.

(Signed) JACOB HAWKINS, *Judge.*

27 *Document marked A, with endorsements thereon by B. F. Jones, city attorney, offered in evidence by counsel for plaintiffs.—Filed 19th January* 1879.

6th dist. court for the parish of Orleans.

THE STATE OF LA., ON THE RELATION OF FOLSOM BROS., *vs.* THE CITY OF NEW ORLEANS. } No. .

Mr. Jonas will please have prepared before the day of trial in the above-entitled case the following:

1st. A. list of judgments registered previous to the 16th of July, 1877.

2d. A statement showing amount paid on judgments registered previous to 16th July, 1877, whether paid in cash, or from having been received on payment of taxes or otherwise.

3d. A statement showing amount of taxes collected by the city for payment of judgments in each year previous to 1st January, 1878.

4th. A statement showing amount of taxes collected in 1878 for the payment of judgments registered previous to that date.

5th. A statement showing the amount of money collected for the payment of judgments which has not been applied to the purpose for which collected.

6th. A statement showing the proportion of each year's collection of taxes, applicable to the payment of the judgments, registered in the department of public accounts, for each year previous to 1878.

(Signed) ROBERT MOTT,
Attorney of Relators.

Endorsement on the reverse of document A.

CITY ATTORNEY'S OFFICE,
March 22d, 1878.

28 Respectfully referred to honorable J. G. Brown, administrator, with the request that the documents called for within be prepared for use in the suit of State, ex. rel. Folsom Brothers, *vs.* City of New Orleans, No. 9837, sixth district court, fixed for Monday next, March 25th, 1878, and sent to this office.

(Signed) B. F. JONAS, *City Attorney.*
(Signed) N. T. N. ROBINSON, *Sec'ty.*

Document marked B, transfer or assignment of Guilfoux & Lee in suit No. 2561 of the late superior district court, offered in evidence by counsel for plaintiffs.—Filed 10th January, 1879.

Transfer or assignment.

NEW ORLEANS, , 187 .

For value received, I hereby transfer and assign to or order all my right, title, and interest in and to the claim due me by the city of New Orleans, amounting to two thousand dollars, in conformity with ordinance No. 2066, administration series, as described below.

(Description of claim.)

For judgment rendered in favor of Guilfoux & Lee (Folsom Brothers, subrogees) vs. City of New Orleans in suit No. 2561, superior district court, with costs, $2,000.00, deposited in the department of public accounts for registration, , 187 .

(Endorsed across face of document B in red ink:) Registered in department of public accounts as No. 270, fo. 172, book 2, under date
29 of January 15th, 1860. (Signed) W. J. C.)

Document C, offered in evidence by counsel for plaintiffs.—Statement of registered judgments unpaid to July 16th, 1877, against the city of New Orleans.—Filed 10th January, 1879.

Statement showing judgments against the city of New Orleans registered in the office of the department of public accounts to July 16th, 1877, and unpaid, together with date and amount of each judgment, not including costs and interests.

Names of plaintiffs.	Date of regist'n.	Am't of judg't	Remarks.
S. D. Moody	M'ch 29, '71	250 00	Balance.
Henry Wenger	" 20, '73	143 50	Balance.
P. S. Nugent	Jan'y 20, '75	4,409 43	
Carondelet Canal & Navigation Co	Feb'y 5, '75	12,500 00	
Henry Henchert	" 20, "	493 64	
Sam'l Logan	" 26, "	1,600 00	
F. Shroeder	M'ch 23, "	83 00	
Jacob Christian	May 6, "	500 00	
J. N. Folwell	June 11, "	12,524 96	
J. P. Macheca & S. Oteri	July 15, "	120 00	
Tho's Bullen	" " "	150 00	
Jno. Fitzpatrick	Aug. 2, "	4,815 86	
Jno. H. Keller	" " "	5,466 00	
Jno. Maylan	Dec. 16, "	887 50	
P. Guilford & C. E. Lee	Jan'y 15, '76	2,000 00	
Nicholas Connell	" 26, "	9,862 29	Balance.
30 Miller, Stoutruberg & Pickham	M'ch 8, '76	2,500 00	
N. B. Hutton	" 17, "	38 00	
R. B. Bagine	" " "	34 50	
Rebecca W. Wolf	May 13, "	13,000 00	
Rufus Waples	July 7, "	2,820 00	
Lawrence Casey	" 8, "	58 37	
John Klein	Aug. 21, "	50,000 00	
Patter & Andrews	Sept. 13, "	901 68	
Jos. Alexander	Nov. 8, "	138 00	
Walter Bailey & J. E. Aldrich	Nov. 20, "	1,200 00	
Alfred Marchand	Dec. 3, "	770 00	
Do. Do.	" 4, "	3,392 93	
Do. Do.	" 4, "	1,015 00	
Chas. E. Rathbone	" 4, "	3,090 00	
Emma B. Jones	" 4, "	1,382 50	
Thos. Pickles	" 7, "	19,454 21	
Mrs. Myra Clark Gaines	" 30, "	57,350 00	Balance.
F. J. Herron	May 4, '77	2,420 00	
J. O. Landry	July 7, '77	700 05	
Folsom Bros	July 15, '77	26,858 00	
		242,929 37	
Add for costs and accrued interest estimated		48,000 00	
Total		$290,929 37	

Ex. O. E.

DEPARTMENT OF PUBLIC ACCOUNTS,
New Orleans, March 23d, 1878.

31 *Document marked D, offered in evidence by counsel for plaintiffs.—Statement showing total receipts from taxes and licenses, and expenditures of the city of New Orleans for the years* 1875 *to* 1877 *inclusive, and from January* 1*st to March* 20*th*, 1878.—*Filed* 10*th January*, 1879.

RECEIPTS.

1875:		
Total tax collections	2,577,061 00	
Licenses	358,259 00	
		$2,935,320 00
1876:		
Total tax collections	1,454,655 10	
Licenses	253,846 00	
		$1,708,501 10
1877:		
Total tax collections	1,352,606 46	
Licenses	293,783 75	
		$1,646,390 21
1878:		
Total tax collections	668,760 05	
Licenses	231,763 50	
		$900,523 55

EXPENDITURES.

1875:		
Interest on bonded debt	$1,141,997 80	
Met. police tax	504,720 95	
New Orleans park	127,472 71	
School tax	258,605 21	
City expenses	544,264 33	
		2,577,061 00
City expense		358,259 00
		$2,935,320 00
32 1876:		
Premium bond tax	250,140 60	
Met. police tax	403,921 64	
School tax	242,521 50	
City expense	558,171 36	
		1,454,655 10
City expense		253,846 00
		$1,708,501 10

1877:		
Premium bond tax	356,587 79	
Crescent City police	267,874 58	
School	180,347 67	
City expense	547,796 42	
		1,352,606 46
City expense		293,783 75
		$1,646,390 21
1878:		
Premium bond tax	203,736 16	
City expenses	372,044 96	
School	92,978 93	
		668,760 05
City expense		231,763 50
		$900,523 55

E. & O. E.
DEP'T PUBLIC ACCOUNTS,
New Orleans, March 23d, 1878.

Document marked E, offered in evidence by counsel for plaintiffs.—Statement showing payments on account registered judgments against the city of New Orleans from January 1st, 1875, to March 20th, 1878.—Filed 10th of January, 1879.

Statement showing payments on account of registered judgments by the city of New Orleans from January 1st, 1875, to March 20th,
33 1878, date of registration, of judgment, and payment; also how paid, whether in cash or in payment of taxes.

Name of plaintiff, M. A. Bowman et als.; registered May 31st, 1875; amount paid, $7,370.00; July 1st, 1875, for taxes.

Thomas Lynne, registered June 25th, 1874; paid April 1st, 1875, $7,608.69; cash by mandamus.

P. S. Nugent, registered January 20th, 1875; paid August 21st, 1875, $478.00, for taxes on a/c.

David Magner, registered March 2d, 1875; paid October 7th, 1875, $1,650.00 cash; compromised.

John Coleman, registered June 24th, 1874; paid July 20th, 1875, $3,000.00, for taxes.

P. Déjan, jr., registered June 11th, 1875; paid October 28th, 1875, $500.00, for taxes.

B. Roubillac, registered March 25th, 1874; paid November 19th, 1875, $187.66, for taxes.

P. S. Nugent, registered January 20th, 1875; paid November 2nd, 1875, $593.59, for taxes on a/c.

L. LeGardeur, jr., registered April 14th, 1874; paid December 1st, 1875, $98.99, for taxes.

A. Pitot, jr., registered April 14th, 1874; paid December 1st, 1875, $98.99, for taxes.

Henry Wenger, registered March 20, '73; paid April 5th, 1876, $187.48, cash on a/c.

J. J. O'Hara, registered March 22d, '75; paid June 1st, 1876, $95.09, for taxes.

Amos Morrison, registered November 5th, '75; paid January 27th, 1876, $402.02, for taxes.

Nicholas Connell, registered January 26, '76; paid November 29th, 1876, $9,001.64, for taxes on a/c.

B. Campbell, registered March 17th, 1876; paid June 1st, 1876, $34.45, for taxes.

34 C. B. Fish, registered January 16th, 1876; paid June 1st, 1876, $416.24, for taxes.

J. M. Brabazon, registered Feb'y 10, '76; paid June 8th, 1876, $914.50, for taxes.

E. V. Leclerc, registered M'ch 17, '76; paid July 6th, 1876, $112.50.

Mrs. Myra Clark Gaines, registered Dec. 30, '76; paid July 1st, 1877, $100,000.00 cash on a/c, borrowed.

E. W. Huntington, registered June 12, '74; paid February 2d, 1878, $500.00 cash.

Adolph Schneiber, registered Dec. 23, '74; paid February 6th, 1878, $500.00 cash, compromised.

Total, $133,749.84.

E. & O. E.

DEPARTMENT PUBLIC ACCOUNTS,
New Orleans, March 23d, 1878.

Document marked F, offered in evidence by counsel for plaintiffs.—Filed 10th January, 1879.

TRANSFER OR ASSIGNMENT.

NEW ORLEANS, , 187 .

For value received, I hereby transfer and assign to , or order, all my right, title, and interest in and to the claim due me by the city of New Orleans, amounting to dollars, in conformity with ordinance No. 2066, administration series, as described below.

DESCRIPTION OF CLAIM.

"For judgment rendered in favor of Folsom Brothers vs. City
35 of New Orleans," in suit No. 3510 of the late superior district court, and now number 24751, of the docket of the third district court, $26,858.00, bearing 5% interest per annum from May 16th, 1873, and costs. Deposited in the department of public accounts for registration, 1878.

(Endorsed across the face of document F in red ink:) "Registered in department of public accounts as No. 296, fo. 14, book 3, under date of July 15th, 1877. (Signed) W. J. C."

Document marked G, offered in evidence by counsel for plaintiff, showing the amount of taxable property in the city of New Orleans.—Filed 10th January, 1879.

OBJECTS OF TAXATION.

1. Cash value of all lands and lots of ground owned or claimed by any person or corporation, whether patented or not, including in the assessment thereof all houses, machinery, fixtures, and improvements of any kind thereon, or appertaining thereto (see section 1, paragraph 1, act 8, extra session 1878), $88,666,560.

2. Cash value of all horses, mares, geldings, mules, jac's, jennies, all meat cattle, all sheep, hogs, and goats (see section 1, paragraph 2, act 8, extra session 1878), $585,055.

36 3. Cash value of all carriages or vehicles, whether with two or four wheels, kept for pleasure, use, or hire (see section 1, paragraph 3, act 8, extra session 1878), $473,585.

4. Cash value of shares of stock or interest in steamboats, ships, schooners, brigs, and all other water craft, whether at home or abroad (see section 1, paragraph 4, act 8, extra session 1878), $231,502.

5. Cash value of all money loaned or in possession (see section 1, paragraph 5, act 8, extra session 1878), $21,850.

6. Cash value of all capital invested or employed each year in trade, traffic, merchandise, or any kind of commerce or other business, and all investments of values of any kind, except the capital stock of banks and banking associations, whose shares are assessed in the hands of the shareholders, and all other investments and values not otherwise assessed, or specially exempted by law (see section 1, paragraph 6, act 8, extra session 1878), $8,244,107.

7. The property of whatever kind of all corporations, over and above their capital stock, and all money and funds held by such corporation in trust or on deposit for persons or corporations, and used in trade or commerce for the benefit of such persons or corporations; provided, this does not apply to deposits made in banks subject to checks (see section 1, paragraph 7, act 8, extra session 1878), $369,948.57.

37 8. Number of shares of each stockholder in all banks or banking associations in this State, . Value of each share, . Total value of shares of stock in said associations, after deducting from capital stock all property otherwise assessed or exempt from taxation (see section 1, paragraph 8, act 8, extra session 1878), $1,982,486.50.

9. Household good' in excess of two hundred and fifty dollars, silver plate, jewelry, works of art, libraries, and pictures, except family portraits (see section 1, paragraph 9, act 8, extra session 1878), $1,697,140.

10. The excess of all annuities, salaries, and incomes over one thousand dollars, derived from any source, except from property taxed (see section 1, paragraph 10, act 8, extra session 1878), $1,041,811.

11. All funds on deposit in the hands or in control of receivers or officers of courts (see section 1, paragraph 11, act 8, extra session 1878.)

12. Cash value of road-bed and rolling-stock of railroads assessed at the rate per mile fixed by the auditor of public accounts, apportioned according to the number of miles in each parish (see section 1, paragraph 12, act 8, extra session 1878), $187,045.

13. Cash value of the capital stock of all corporations doing business in this State, and not invested in property otherwise assessed or exempt from taxation (see section 1, paragraph 13, act 8, extra session 1878), $5,392,171.

38 Total amount of the assessment of all taxable property comprised in the preceding thirteen (13) columns, being the objects of taxation enumerated in section 1, of act 8, extra session, 1878. Said objects of taxation are liable to a tax of 13 mills, described in the preceding thirteen (13) columns. $108,893,261.07.

Document marked I, offered in evidence by counsel for respondent, being an ordinance adopting an estimate of the receipts or revenues of the city of New Orleans for the year 1879.—*Filed* 10*th January*, 1879.

MAYORALTY OF NEW ORLEANS,
City Hall, December 26*th*, 1878.

(No. 4824, administration series.)

An ordinance adopting an estimate of the receipts or revenues of the city of New Orleans for the year 1879.

Be it ordained by the council of the city of New Orleans, That the following estimate of the receipts or revenues of the city of New Orleans for the year 1879 be, and the same is hereby, adopted:

Tax of one and one-half per cent. on the valuation of real estate and personal property, as per assessment rolls, total, $111,226,433.07		$1,668,396
Licenses		275,000
Markets	$200,000	
Less amount due Louisiana Nat'l Bank.	83,000	
		117,000
39 Wharves & landings		35,000
Bills receivable		11,470
Interest, printing, & law charges		20,000
Fines and fees		15,000
Ground rents		2,500
Cemeteries		2,000
Sugar sheds		5,000
Pound fees		1,000
Miscellaneous		25,000
Total		$2,177,366
Less ten per cent. in conformity with act No. 68 of 1877.		217,736
Total		$1,959,630

Adopted by the council of the city of New Orleans, December 24th, 1878. Yeas: Behan, Chevalley, Glynn, Houston, Marks, Mealley.

ALF. H. ISAACSON,
Mayor ad interim.

A true copy.

ROBERT C. WOOD,
Secretary.

Document marked ——, *being the copy of an ordinance adopting an estimate of expenditures of the city of New Orleans for the year* 1879, *offered in evidence by counsel for respondent.*—*Filed* 25*th January*, 1879.

[City ordinances.—Official.]

MAYORALITY OF NEW ORLEANS,
City Hall, January 15*th*, 1879.

40 (No. 4857, administration series.)

An ordinance adopting an estimate of the expenditures of the city of New Orleans for the year 1879.

Be it ordained by the council of the city of New Orleans that the fol-

lowing estimate of expenditures (including police and schools) for the year 1879, be, and the same is hereby, adopted.

Department of improvements:		
Administrator's office, salaries and expenses.	4,500	
Streets, wages, &c	175,500	
Streets, repairs, &c	45,000	
Streets, bridges, crossings, & wings	40,000	
Drainage machines	25,000	
Drainage canals and levees	5,000	
Canal bridges, repairs, &c	5,000	
		$300,000
Department of commerce:		
Administrator's office, salaries and expenses.	3,300	
Wharves & landings	12,000	
Markets	9,400	
Draw-bridges	7,300	
		$32,000
Department of water-works and public buildings:		
Administrator's office, salaries and expenses.	3,500	
Court-houses, salaries & repairs	5,100	
Aged, infirm, & indigent	5,000	
Repairs public buildings	19,000	
City-hall building, repairs, etc	2,500	
41 Public sinks, contract	3,000	
Insane asylum, salaries and expenses.	19,500	
Small pox hospital, salary of visiting physician	5,000	
		$62,600
Department of police:		
Administrator's office, salaries and expenses.	4,300	
Public squares, salaries & expenses	6,000	
Public pounds, salaries & rents	4,200	
Workhouse, salaries	1,640	
Boys' house of refuge, salaries, provisions, etc	15,660	
Cost removal sick and dead, salaries, etc	5,000	
Cemeteries, repairs, etc	1,000	
Conveying prisoners, forage, etc	700	
		$38,500
Department of assessments:		
Administrator's office, salaries and expenses.	4,000	
Board of assessors, salaries and expenses	11,000	
		$15,000
Department of finance:		
Salaries and expenses	22,000	
		$22,000
Department of public accounts:		
Salaries and expenses		$14,000
Surveyor's office:		
Salaries and expenses	19,000	
Dredge boats	5,000	
		$24,000
42 Tax mortgage registers:		
Salaries and expenses		$4,500

Mayor's office:		
Salaries and expenses		$5,000
City hall building:		
Salaries of city librarian, keeper of archives, janitor and porters, and classification of the records of the district courts		$7,500
City council:		
Salaries and expenses		$3,500
City attorney's department:		
Salaries and expenses		$10,800
Public printing:		
Proceedings of council, promulgation of ordinances, reports, advertisements, and tax-lists		$4,500
Tax bills, etc.:		
Printing tax ledgers, bills, etc., and making tax bills		$7,000
Mayor and administrators:		
Salaries		$49,500
Board of health:		
Salaries, sanitary inspectors, and police officers		$10,000
Lighting city:		
Contracts with New Orleans and Jefferson City Gas Light Companies	113,000	
Contracts for lighting with oil	21,000	
		134,000
Fire departments:		
Firemen's Charitable Association for city	120,000	
Firemen's Charitable Association fo rfifth district	9,600	
43 Firemen's Charitable Association, sixth district	14,400	
Firemen's Charitable Association, seventh district	6,400	
		$150,400
Criminal justice:		
Superior criminal court	9,500	
First district court	6,500	
Criminal sheriff, parish prison, and court fees	50,000	
District attorney, salary	5,000	
Jury commissioners, salaries	1,800	
Recorder's courts, justices of the peace, and constables	30,000	
Rents of courts and police stations	7,800	
		$110,600
Miscellaneous:		
Support of orphans	42,000	
Law charges	20,000	
Coroners' salaries	12,000	
Recording deaths	1,000	
Improvements to fire alarm telegraph	8,000	
Judgments	10,000	
Interest and redemption, $598,750; less cash balance to credit of fund and amount esti-		

	mated as collectible on unpaid taxes of 1876, 1877, and 1878, $273,750	325,000	
	City park	84,040	
	Police department	250,000	
	Public schools	200,000	
			$952,040
44	Contingent		2,190
	Total		$1,959,630

Adopted by the council of the city of New Orleans January 14th, 1879.

Yeas: Behan, Chevalley, Glynn, Houston, Isaacson, Marks Meaby.

I. W. PATTON, *Mayor.*

A true copy.

ROBERT C. WOOD,
Secretary.

Document K offered in evidence by counsel for defendant. Statement showing payments on account of judgments by the city of New Orleans from January 1st, 1875. Filed 10th January, 1879.

Statement showing payments on account of judgments by city of New Orleans from January 1st, 1875, and how paid, whether in cash or scrip, and when paid.

Name of plaintiff, Henry Wenger, registered No. 213, folio 39, date of registry March 20th, 1873; amount paid, $337.48; paid in cash $337.48; when paid, $187.48 paid April 5th, 1876, & $150.00 paid April 17th, 1878.

Name of plaintiff, William Culliman, registered No. 211, folio 36; date of registry June 23d, 1873; amount paid, $95.09; paid in cash, $95.09; when paid, June 1st, 1876.

Commissioners of the New Orleans Park, registered No. 221, folio 54, registered July 1st, 1874; amount paid in cash, $90,002.83.

45 B. Roubillaud, plaintiff, J. Aardet transferree, regirtered No. 228, folio 64, M'ch 25th, 1874; paid in scrip December 2nd, 1875, $187.65.

A. Pitot, jr., plaintiff, Henry Bier, transferree, registered No. 230, folio 66, April 14th, 1874; paid in scrip December 1st, 1875, $98.99.

L. Le Gardeur, jr., plaintiff, Henry Bier, transferree, registered No. 231, folio 67, April 14th, 1874; paid in scrip December 1st, 1875, $98.99.

E. W. Huntington, plaintiff, registered No. 234, folio 69, June 12th, 1874; paid in cash February 2d, 1878, $500.00.

John Coleman, p aintiff, E. Conery, jr., transferree, registered No. 235, folio 70, June 24th, 1874; paid in scrip July 20th, 1875, $3,000.00, amount judgment $3,934.87, compromised for $3,000.00.

Thomas Lynne, plaintiff, registered No. 236, folio 71, June 25th, 1874; paid in cash various dates in 1875, $7,608.69.

A. Schreiber, plaintiff, Wm. Klein & Co., transferree, registered No. 241, folio 89, December 23d, 1874; paid in cash February 6th, 1878, $500.00. Judgment $696.00. Compromised for $500.00.

P. S. Nugent, plaintiff, various transferrees, registered No. 242, folio 99, January 20th, 1875; paid in cash March 28th, 1878, $1,000.00; paid in cash various dates, 1,071.59; paid in cash June 22d, '78, 6,908.05.

David Wagner plaintiff, Richard Lloyd & Fellows, transferree, registered No. 247, folio 121, March 20th, 1875; paid in cash October
46 6th, 1875, $1,650.00. (Judgment $5,000.00, compromised for $1,650.00.)

M. A. Bowman et als., plaintiffs, various transferrees, registered No. 251, folio 133, May 31st, 1875; paid in scrip at various dates in 1875, $7,370.00.

I. Déjeau, jr., plaintiff, E. H. Levy, transferree, registered No. 253, folio 142, July 1st, 1875; paid in scrip October 27th, 1875, $500.00.

Amos Morrison, plaintiff, E. Stern, transferree, registered No. 258, folio 159, November 5th, 1875; paid in scrip June 8th, 1876, $402.05.

C. B. Fish, plaintiff, E. Stern, tranferree, registered No. 271, folio 175, January 16th, 1876; paid in scrip June 8th, 1876, $416.25.

Nicholas Connell, plaintiff, A. Jardet and Jno. Klein & Co., transferrees, registered No. 272, folio 178, January 26th, 1876; amount paid in scrip at various dates, on a/c $9,000.64.

J. M. Brabazan, plaintiff, A. Jardet and W. W. Handlin, transferrees, registered No. 273, folio 184, February 10th, 1876; paid in scrip at various dates, $914.50.

E. V. Leclerc, plaintiff, A. Jardet transferree, registered 277, folio 202, M'ch 17th, 1876; paid in scrip July, 6th, 1876, $112.50.

Benj. Campbell, plaintiff, registered No. 278, folio 204, March 17th, 1876; paid in scrip July 6th, 1876, $34.45.

W. R. Fish, plaintiff, registered No. 279, folio 206, May 8th, 1876; amount paid in scrip at various dates, $1,395.09.

John Klein, plaintiff, registered No. 283, folio 224, August 21st,
47 1876; amount paid, $59,430.16. $2,000.00 about paid in cash; $18,430.16 at various dates paid in scrip, exchanged for water works stock, railroad bonds funded in premium bonds.

A. Marchaud, plaintiff, registered No. 287, folio 238, December 3d, 1876; amount paid various dates, $3,133.00. Coupons paid by commissioners of consolidated debt.

A. Marchaud, plaintiff, registered No. 288, folio 241, December 3d, 1876; coupons paid by commissioners of consolidated debt $2,555.50.

Mrs. Gaines, plaintiff, registered No. 293, folio 258, December 30th, 1876; amount paid in cash at various times, $107,059.00.

Uni n Insurance Company, plaintiff, registered No. 304—323, folios 61—134, April 15th, 1878; paid in scrip June 4th, 1878, $24,305.93. (Exchanged for water works stock.)

Léon Bertoli, plaintiff, H. Bier transferree, registered No. 324, folio 136, April 25th, 1878; paid in scrip June 4th, 1878, $759.26.

Mrs. F. Maudell, plaintiff, W. R. Forman transferree, folio 151; amount paid in scrip May 18th, 1878, $3,593.25. (Exchanged for water works stocks.)

F. L. Fernandez, plaintiff, folio 168; amount paid in scrip June 4th, 1878, $1,091.45.

Leopold Hauser, plaintiff, J. Strauss transferree, folio 180; paid in scrip June 15th, 1878, $290.00.

W. E. Murphy, plaintiff, folio 184; paid in scrip June 3d, 1878, $306.00. (Exchanged for water work stock.)

48 W. J. Peterkin, plaintiff, not registered; amount paid in cash August 2, '75, (U. S. court) $5,769.45.

J. D. Hill vs. Board of Drainage Commissioners, not registered; paid in scrip May 31st, '75, $2,280.00.

Hebrew Society, plaintiffs, not registered; amount paid in cash November 29th, 1876, $500.00.

Imperial Fire Insurance Company, plaintiff, not registered; paid in cash Aug. 3, '77, $500.00.

Paid in cash April 25, '78, $225.00.

Canal Carondelet Navigation Company, plaintiffs, registered No. 2424, folio 100, February 28th, 1864; amount paid in cash June 10th, 1878, $21,989.50.

A. C. Lewis, plaintiff, H. Bier transferree, registered No. 300, folio 32, November 3d, 1877; paid in scrip October 23d, 1878. (Exchanged for water works stock.)

Robert H. Bartley, plaintiff, registered No. 301, folio 35, February 11th, 1878; paid in scrip August 2d, 1878, $1,907.85. (Exchanged for water works stock.)

Cora A. Heunen, plaintiff, registered No. 342, folio 194, June 7th, 1878; paid in scrip Aug. 2, '78, $80.45. (Exchanged for water works stock.)

Labatt & Buisson, plaintiffs, registered at various dates; amount paid at various times in scrip, $18,300.00.

Total judgments paid, $390,251.24, as follows:

49	Cash	$247,445 09	
	Scrip	$98,117 65	
Klein funded in premium bonds		$39,000 00	
Marchaud coupon judgments paid		$5,688 50	
	Total amount judgments paid		$390,251 24

Document marked, being an ordinance adopting an estimate of receipts or revenues of the city of New Orleans for the year 1878, *offered in evidence by counsel for respondents.—Filed* 10*th January*, 1879.

MAYORALITY OF NEW ORLEANS,
City Hall, December 28*th*, 1877.

(No. 4276.—Administration series.)

An ordinance adopting an estimate of receipts or revenues of the city of New Orleans for the year 1878.

Be it ordained by the council of the city of New Orleans, that the following estimate of the receipts or revenues of the city of New Orleans for the year 1878, be and the same is hereby adopted.

Tax one and one-half per cent. on the valuation of real estate and personal property, as per assessment rolls on a total of $111,123,695			1,666,855
Licenses			300,000
Market revenues		$250,000	
Less due Louisiana National Bank		$126,000	
			124,000
	Water works		150,000
50	Wharves and landings		35,000
	Bills receivable		10,500
Law charges, &c			30,000
Fines and fees			30,000
City railroads			5,000
Ground rents			5,000

Pound fees	1,000
Cemeteries	5,000
Sugar sheds	5,000
From State of Louisiana; claims for repairing levees & cash advanced insane asylum, Jackson, La	155,000
Miscellaneous	75,000
Total	2,597,355
Reduced 10 per cent. as per act No. 68, approved April 14th, 1877	259,735
Total	2,338,620

Adopted by the council of the city of New Orleans, December 26th, 1877.

Yeas: Brown, Cavanac, Denis, Diamond, McCaffrey, Reugstorff.

(Signed) ED. PILLSBURY,
Mayor.

A true copy.

(Signed) THOS. G. RAPIER,
Secretary.

51 *Document marked, being an estimate of expenditures of the city of New Orleans for the year* 1878, *offered in evidence by counsel for respondents.—Filed* 10*th January*, 1879.

MAYORALITY OF NEW ORLEANS,
City Hall, January 9th, 1878.

(No. 4300, Administration series.)

An ordinance adopting an estimate of expenditures of the city of New Orleans for the year 1878.

Be it ordained by the council of the city of New Orleans, that the following estimate of expenditures (including police and schools), for the year 1878, be and is hereby adopted:

Departments of improvements.		
Contracts for draining machines, clearing and repairing streets, &c.	192,000	
Drainage canals, machinery, new works, &c., salaries & office expenses	75,000	
		$267 000
Surveyor's department.		
Salaries & office expenses		20,000
Department of police:		
Administrators' office, salaries and expenses.	4,500	
Public squares, salaries, and wages	5,000	
Public pounds, salaries, and rents	5,100	
Workhouse building, salaries, forage, etc.	5,000	
Boys' House of Refuge, salaries, provisions, etc.	13,500	
Cost of removal sick and dead	2,500	
Public cemeteries, repairs, etc.	1,500	
		$37,100

52	Department of commerce:		
	Administrator's office, salaries and expenses, wharves and markets	26,500	
	Canals and drawbridges, salaries and expenses	7,000	
			$33,500
	Department of water works and public buildings:		
	Administrator's office, salaries and expenses	3,000	
	Water works, pipes, machinery, &c.	26,000	
	Water works, salaries, and wages	36,000	
	Court-houses, salaries, and repairs	6,000	
	Public buildings (not enumerated) repairs, &c.	10,000	
	Insane asylum, salaries and provisions	18,000	
	House of aged and infirm, salaries and provisions	4,500	
	Public sinks, contract	3,000	
	City Hall building, repairs, etc.	6,000	
	Support of small-pox patients, and salary of visiting physician	6,500	
			$119,000
	Department of finance:		
	Salaries & office expenses	22,000	$22,000
	Department of public accounts:		
	Salaries & office expenses		15,000
	Department of assessments:		
	Salaries & office expenses		18,000
53	Tax mortgage registers:		
	Salaries and stationery		4,500
	Mayor's office:		
	Salaries and expenses		5,000
	City Hall building:		
	Salaries, librarian, keeper of archives, janiter, and porter	6,000	6,000
	City council:		
	Salaries and stationery		3,000
	City attorney's department:		
	Salaries and office expenses		11,400
	Printing and cost of tax bills, ledgers, registers, &c.		12,000
	Mayor & administrators		49,500
	Lighting city:		
	Contracts with New Orleans and Jefferson City Gas Light Companies	121,000	
	Contract for lighting with oil	22,000	
			$143,000
	Fire department:		
	Firemen's Charitable Association for city	140,000	
	Firemen's Charitable Association fifth district	12,000	
	Firemen's Charitable Association sixth district	18,000	
	Firemen's Charitable Association seventh district	8,000	
	Board of underwriters for Babcock machines	6,000	
			$184,000
	Board of health		15,000

54 Criminal justice:		
Superior criminal court	9,000	
First district court	6,500	
Criminal sheriff, parish prison, and court fees	75,000	
District attorney, salary	5,000	
Jury commissioners' salaries	1,200	
Recorders and justices of the peace courts and constables	30,000	
Black Maria	1,500	
Rents of courts and police stations	7,800	
		$136,000
Miscellaneous:		
Support of orphans	39,504	
Law charges	20,000	
Coroners' salaries, etc.	13,000	
Recording deaths	1,000	
Judgments	20,000	
Interest and redemption	509,500	
City park	82,000	
Police department	325,000	
Public schools	225,000	
		$1,235,004
Total		$2,336,004
Contingen'		2,616
Total		$2,338,620

Adopted by the council of the city of New Orleans, January 2d, 1878.
Yeas: Brown, Cavanac, Denis, Diamond, Reugsdorff—5.
Nays: McCaffrey—1.
(Signed) ED. PILSBURY, *Mayor.*

55 A true copy.
(Signed) THOS. G. RAPIER,
Secretary.

Continuance of cause.—Extract from the minutes 10th January, 1879.

Third district court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

This case came on for trial.
Present, R. Mott for relators; E. H. McCaleb, city attorney, for respondents.
When, after hearing pleadings and part of the evidence, the court continued this matter to the 21st instant, at 10 o'clock a. m.

Submission of cause.—Extract from minutes 21st day of January, 1879.

3d dis. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans } No. 25521.

This case came on this day for further trial.
Present, R. Mott for relators; E. H. McCaleb, for respondents.
When, after hearing further evidence and argument of counsel, the court took time to consider.

56 *Reasons for judgment.—Filed 31st Jan'y*, 1879.

Third district court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

Relators allege that on the 28th June, 1877, they recovered judgment against the city of New Orleans for the sum of $26,850.00, with interest and costs, and that they are the transferrees of a judgment obtained by Guilfoux & Lee against said city, upon the 15th June, 1874, for the sum of $2,000.00 and costs.

That said judgments were registered in the office of the administrator of public accounts in accordance with the provisions of act No. 5, extra session of 1870. The judgment of Guilfoux & Lee having been so registered January 15th, 1876, and that in favor of relators July 15th, 1877. That said judgments should have been put upon the budget of taxes to be collected by the city, and should have been paid, wholly or in part, from such taxes, and in fact that they, with other judgments against the city, were punctually put upon the budget, and taxes were to some extent levied and collected, and should have been applied to the payment and extinction of said judgments, but were not so applied, and that no part of said judgments has been paid.

57 That judgments for large amounts were registered prior to those of relators, amounting, as claimed by the city, to $500,000.00, and it was the duty of the city officers to place them all on the budget and collect taxes and pay them, but that they have been only in part placed on said budget, and the taxes collected have not been applied to their judgment, or partial payment, but to other uses. That the officers of the city have refused to place all of said judgments in the budget, and to levy and collect taxes for their payment, as required by law, although requested by relators so to do.

That under the law relators are prohibited from issuing execution upon their said judgments, and are without remedy, except through the levy of taxes for their payment, and that the refusal of the officers of the city to levy such taxes deprives relators of all means of collecting said judgments, and is in violation of their vested rights and of the Constitution and laws of the United States and of this State.

They pray that a writ of mandamus issue, commanding the city, through its officers, "to place upon the budget for taxes for the year

1879, and all succeeding years, until the same be fully paid, all the judgments, including those of relators, which have been registered ac-
58 cording to law, in addition to the other taxes to be levied according to law, and to impose taxes in addition to all other taxes required for other expenses to a sufficient amount to pay and satisfy the whole of said registered judgments."

To this the administrators of the city of New Orleans answer as follows:

They deny that there has been any division of funds set apart for the payment of relators, or that they refused to budget the judgments in question, averring that so short a time elapsed between the demand and the institution of this proceeding that they were unable to signify their assent or dissent in the matter.

They allege, however, as a reason not complying with said demand, that there is no money in the city treasury out of which the relators can or ought to be paid; that the power of the city to levy taxes is limited to one and a half per cent. upon the appraised value of the property subject to taxation, and that said value does not exceed $111,000,000.00; that the revenue of the city for the year 1879 from all sources will not be sufficient to pay its necessary current expenses for maintaining the government, which expenses are necessarily priv-
59 ileged, and must be provided for before debts can be paid.

That inasmuch as taxation to the limit of the law, together with all other sources of revenue, will not produce a sufficient amount for the necessary alimony of the city government, and all appropriations in excess of the revenue are prohibited by law, it is impossible for respondents to budget the judgments referred to.

That should there be any surplus on hand after paying the expenses of the city, they propose to apply the same to the judgment or judgments in the order in which they are registered, and that they can do no more. Wherefore they pray to be hence dismissed, etc.

The evidence shows that relators filed a suit in the superior district court May 15th, 1873, claiming that upon the sixth of that month a mob or riotous assembly had broken into their store in the city of New Orleans and had destroyed property to the value of $26,858.00, and that the city of New Orleans was liable therefor, and praying judgment accordingly.

The case was tried before a jury, and verdict rendered for $15,000.00, which was made the judgment of the court. The plaintiffs ap-
60 pealed, and in December, 1876, the supreme court gave judgment (reversing the verdict and judgment appealed from) for the full amount claimed (see 29 Annual, 937).

It further appears that on the 24th March, 1873, Guilfoux & Lee instituted suit in the same court upon a similar cause of action, alleged to have arisen upon the 5th of that month, and claiming $8,124.55, and a verdict and judgment was rendered in their favor for $2,000.00, and costs, the judgment having been signed July 3d, 1874. Relators were duly subrogated to the rights of the plaintiffs under that judgment.

Whether it was ever appealed from the court is not advised, nor is it material, since it is not claimed that it is now final.

It also appears that these judgments were properly registered upon January 15th, 1876, and July 15th, 1877, as alleged in the petition.

This registration was made pursuant to section 2 of act No. 5 of 1873 (extra session), which provides:

"That hereafter no writ of execution or fieri facias shall issue from any of the courts in this State against the city of New Orleans to enforce the

payment of any judgments for monies against the city of New Or-
61 leans, but final judgment against the city of New Orleans, commanding said corporation to pay any sum in money, when the same shall have become executory, shall have the effect in law of establishing and fixing the amount of plaintiff's demand against said corporation, and the plaintiff may cause a certified copy of said judgment, together with a copy of the plaintiff's petition and defendant's answer in the cause which judgment is rendered, together with the certificate of the court that such judgment is final and executory, to be filed in the office of the controller of said city; and it shall be the duty of the controller or auditing officer of said corporation to receive the same and cause the same to be registered in his office of the date in which the same shall have been presented; and, when so registered, it shall be the duty of the controller to warrant on the treasurer or disbursing officer of the corporation for the amount due thereon, without any special appropriation of money therefor by the common council; provided, always, that there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose in the annual budget or de-
tailed statement of items of liability and expenditures required
62 to be made by the one hundred and twenty-fourth section of the act of the legislature, entitled 'An act to constitute the city of New Orleans,' etc., of 1856." Section 3 of this act further provides: "That in case the amount of money designated in the annual budget for the payment of judgments against the city of New Orleans, at the date when any judgment against said corporation shall have been final and executory, shall have been exhausted, the common council shall have have power, if they deem it proper, to appropriate from the money set apart in the budget or annual estimate for contingent expenses a sufficient sum of money to pay said judgment or judgments; but if no such appropriation be made by the common council, then all judgments shall be paid in the order in which they shall be filed and registered in the office of the controller from the first money next annually set apart for that purpose."

The fourth section provides that if by reason of the neglect or malfeasance of the officers any judgment creditor shall be unjustly delayed, or shall not be paid in his regular order, and shall suffer loss thereby, he shall have a right of action against such officers and their sureties.

The evidence further shows that, including the judgment reg-
63 istered in favor of relators upon the 15th July, 1877, there are still unpaid judgments registered up to that date, which amount in the aggregate, with interest and costs estimated, to the round sum of $290,000.00.

The amount registered since the 15th July, 1877, is not shown. The estimated receipts for the year 1879, as shown by the budget offered in evidence (from all sources), amount to $1,959,630.

The estimated expenditures, as shown by the testimony of the administrator of accounts, and by the profit of the budget of expenditures adopted by the council in committee of the whole, exactly covers the estimated receipts.

In the last-mentioned budget, or , there is an item of $10,000.00 for judgments, and another item of $2,190.00 for "contingent."

It requires no profound mathematician to demonstrate that, with judgments registered and unpaid up to the 15th July, 1877, amounting to $290,000, aside from those which have been registered since that date, an annual appropriation of $10,000.00 will make very little impression upon the judgment debt of the city.

Taking the principal of this debt at $242,929.37, as stated by the respondents, and omitting the $48,000.00 estimated interest and
64 costs, it is evident that $10,000 per annum will fall something like $2,100 short of paying interest on said debt at the legal rate of five per centum, so that instead of decreasing the judgment debt will increase year by year, and the judgment in favor of relators being the last registered of the series which make up the amount refer'ed to, cannot only never be paid, but, as if to carry him even beyond eternity, its prospect of payment becomes more remote with each succeeding year. It becomes the duty of the court to inquire whether the views of the learned counsel for the respondents, which lead to conclusions so deplorable to the relators, are well founded.

It has already been stated that the judgments of the relators are based upon obligations which arose in the early part of the year 1873. At that time there was in force, unquestioned, certain provision of law contained in section 19 of act No. 7 of 1870 (extra session), said act being commonly known as the New City Charter, the provisions in question were as follows:

"That the council shall, once in every twelve months, before fixing and deciding upon the amount of taxes and licenses to be assessed for the ensuing year, cause to be made out a detailed estimate ex-
65 hibiting the various items of liabilities and expenditures, including the requisite amount for contingent expenses during said year, and shall cause the same to be published for at least ten days in the official journal of the city, and such rate of taxation, not exceeding one dollar and seventy-five cents on every hundred dollars of valuation, shall thereafter be fixed and assessed as, together with other revenues of the city, may be necessary to meet said estimated liabilities and expenditures. The adoption of said detailed estimates shall be considered as the appropriation of the amount therein stated for the purposes therein stated, and the administrator of public accounts shall not audit, nor shall the administrator of finance draw or sign any check upon the fiscal agent therefor, of any claims, unless an appropriation therefor has been duly made in accordance with this act."

In the absence of any other statutory provision controlling the subject, it would appear that it was a matter of right upon the one hand, and of duty upon the other, that the claims of the relators and of Guilfoux & Lee, for which the city was liable in 1873, should have been placed upon the detailed estimate of liabilities and expenditures pro-
vided for as above, some time within the twelve months after
66 they arose, and that the common council should have assessed such rate of taxation, not exceeding one $\frac{75}{100}$ per cent. upon the taxable property of the city, as with the other revenues of the city would have sufficient to satisfy said claims.

This, however, was not done; the liability of the city was disputed in the courts (no complaint can be made of this), and as a result of the litigation, it was ascertained by final decisions of the courts that the liability existed, judgments were rendered and registered—that in favor of Gilfoux & Lee registered January 15th, 1876, and that in favor of relators registered July 15th, 1877.

In the mean while, however, it is claimed by respondents that changes had taken place in the constitution and the laws of the State by which the rights of the parties were affected.

The following are the changes referred to, to wit:

1st. An amendment to the constitution was adopted in November, 1874, prohibiting the city of New Orleans from increasing its debt in

any manner or form, or under any pretext, and prohibiting the officers of said city, after January 1st, 1875, from issuing any warrant, or other evidence of indebtedness, except against money actually in
67 the treasury—reserving to the city, however, the right to exchange new bonds for old ones, and making a special exception as to certain drainage warrants.

2nd. An act was passed in 1876 (No. 31), known as the premium-bond act, in which it was provided that the mayor and administrators should "exchange all recognized and valid bonds of the city of New Orleans, and of the late cities of Jefferson and Carrollton, for bonds known as the premium bonds of the city of New Orleans," etc.

It was further provided, that in the month of December of each year the common council should include in the annual budget for the ensuing year a sufficient sum to pay the interest and principal falling due under the premium-bond scheme as put in operation by said act, and should levy a tax to pay the same, to constitute a special fund, subject to the following proviso, to wit:

Provided that the taxable power of the corporation of New Orleans for all purposes, including general administration, school, police, lighting, salary officers, court expenses, and every other purpose of government, including the sum to be raised to pay the premium bonds, as above stated, shall never, until the full, complete, and final pay-
68 ment of the said premium bonds, exceed the rate of one and a half per centum on the dollar of all the assessed value of property subject to taxation within the limits of said city of New Orleans, etc. Section 5 of this act repeals all other acts authorizing the levying or collection of any tax for the payment of the principal or interest of any bonds other than premium bonds, and prohibits the courts from issuing writs of mandamus to compel the collection of any other interest tax whatever.

3. Still another act was passed in 1877, to which the court is referred, to wit, act No. 30 of 1877, by which, among other things, all municipal corporations in the State are prohibited from making appropriations for any one year in excess of the revenues for such year.

Arguing upon the basis of this legislation and of the evidence offered, the counsel for respondents concludes that the only remedy which the law give to the relators at the time they acquired their rights has been taken from them; that although at that time (as has since been ascertained by the judgments rendered) they were entitled to have an appropriation made for the payment of their claims, and to participate in the fruits of a tax to the extent of one $\frac{75}{100}$ per cent. upon the assessed
69 value of the taxable property in the city, yet that, by subsequent legislation, they are utterly divested of these rights and remedies, and can claim nothing which the courts will enforce.

It is claimed that under this recent legislation the limit of taxation has been reduced to one and one-half per cent., being a reduction of $2\frac{1}{2}$ mills as compared with the rate authorized when the claims of relators originated, and that after the payment of the necessary expenses of the city government and of these creditors of the city who are referred to in act No. 31 of 1876, nothing is left wherewith to pay the relators or any other creditors save the sum of $10,000.00 (or, if we include the contingent, at most $12,000.00), the appropriation of which amount, as we have seen, leaves the aggregate indebtedness to such creditors to increase year by year.

In the case of Butz vs. The City of Muscatines (8 Wallace, 581), to which the court has been referred, the Supreme Court of the United

States used the following language, which seems singularly applicable to the case at bar, viz:

"All the corporate property of the debtor is exempt by law from
70 execution. The tax of one per cent. is all absorbed by the current expenses of the debtor. There is neither surplus nor a prospect of surplus which can be applied upon the judgment. The resources of the debtor may be ample, but there is no means of coercion; until the debtor chooses to pay the creditor can get nothing. The usual relations of debtor and creditor are reversed, and the judgment, though solemnly rendered, is as barren of results as if it had no existence. Such are the effects which must necessarily follow from the theory, if maintained, of the defendants in error. Nothing less than the most cogent considerations could bring us to the conclusion that it was the intention of the law-making power of so enlightened a State to produce by its action such a condition of things in its jurisprudence."

In the case in which the decision just quoted was rendered, it appears that the character of the city of Muscatines limited taxation to one per cent., which made the general provisions of the code of Iowa previously existing; in cases where executions against corporations were returned unsatisfied, they were required to levy a tax as early as practicable to pay off the judgment.

This code, with its general provisions, was re-enacted after the
71 adoption of the charter of the city of Muscatine; in the meanwhile, however, bond had been issued by said city and money recovered. The question decided by the Supreme Court was that the lender of the money was entitled to enforce a tax for the payment of his claim under the general provisions of the code, and that the limitation in the city charter applied only to voluntary action of the city officers and not to their obligations with respect to the payment of judgments.

In the case of Supervisors vs. The United States (18 Wallace, p. 71), the plaintiff applied for a mandamus to compel the supervisors of Carroll County, Iowa, to levy a special tax for the payment of a judgment obtained by him on warrants issued in the ordinary expenditures of the county. The supervisors answered that they were only authorized to levy a tax of four mills for such expenditures; that they had levied a tax at this rate for the current year, and would continue to levy a similar tax for each succeeding year until the judgment should be paid. The Supreme Court held that they could not be compelled to do more, and referring to the decision in the case of the city of Muscatine, as to the construction of the code of Iowa, stated that when that
72 decision was rendered the supreme court of Iowa had not passed upon that question; neither of the cases mentioned involve the conditions which are presented in the case at bar. In both of these cases the law limiting the rate of taxation was in force when the obligations were created, and the revenues derived appear in the one case to have been applied wholly to the necessary expense of the government, and in the other case justly to that purpose, and, as far as can be gathered from the judgment, justly to the extinguishment of claims of a similar character, with the prospect of reaching that of the plaintiff. In the case at bar, when the obligation was created the limit of taxation here set up had not been fixed, and it appears from the evidence that the tax realized is appropriated to the payment of a particular class of creditors and to the expenses of government, with no prospect or hope that the claim of the relators will ever be reached.

It does not appear, from anything before this court other than the act

No. 31 of 1876, that the creditors in whose favor the revenues of the common debtor were thus disposed of were entitled to any priority of payment over the relators, nor that they were entitled, by virtue
73 of any law existing at the time that the obligation in favor of relators was created, to appropriate the whole of the available assets of the city to the exclusion of all other creditors. It would therefore appear, to paraphrase the language of the court in the case of State ex rel. Knaland vs. Shreveport (29 Ann., 662), to which counsel for respondents has referred, that the rights of the relators "are fixed by a decree, and should have been classed as acknowledged creditors of the city;" as such they are entitled to and "should be allowed a proportionate share in any and every surplus of funds which may remain in the treasury after the payment of expenditures indispensable to the government of the city."

This would seem to follow in any view of the case, the more especially when it is remembered that the judgment in favor of Guilfoux & Lee was actually registered before the act of 1876 was passed. But, in the opinion of the court, relators are entitled to more than this.

At the time that their rights were acquired, the sole remedy to which they were entitled, and through the medium of the then existing taxing power of the city—if that power can be diminished by subsequent legislation, or that, upon the most reasonable construction of the
74 statutes, the enforcement of their rights will be impeded for an indefinite period, it might with the same propriety be withdrawn altogether, thus operating an absolute divestiture of the remedial right which had existed in the relators.

The court is, therefore, of opinion that the relators is entitled to the remedy which the law afforded them when this right sprang into existence, since no other remedy has been provided, and, as part of that remedy, that they are entitled to demand the exercise of the taxing power by respondents as it then existed. With relation to the budget for the present year, an investigation of the statutes to which the court has been referred has disclosed the fact that the legislature apparently were looking section 19 of the new city charter (act No. 7 of 1870), have made section 124 of the charter of 1856 the laws of the city's budgets. This section requires that the budget shall be prepared in the month of December of each year, and as the case was not tried until the 10th of January, it would seem to be impracticable to effect the object desired by the relators so far as the budget for the year is concerned.

It is therefore ordered, adjudged, and decreed that the writ of
75 mandamus herein issued be made peremptory in so far as to order the respondents to place upon the next budget or detailed estimate of liabilities and expenditures to be prepared by them in their official capacities, and upon succeeding budgets until the same shall be paid in full, all judgments rendered against the city of New Orleans pursuant to the provisions of act No. 5 of the extra session of 1870, from the 15th day of July, 1877, together with the judgment rendered in favor of the relators herein and registered upon that day; and that with a view to the payment of said judgment, respondents be ordered to levy taxes to the extent of one dollar and seventy-five cents upon every hundred dollars of valuation as prescribed by section 19 of act No. 7 of the extra session of 1870.

It is further ordered that respondents pay the costs of this proceeding.

Judgment.

Third district court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

For the reasons assigned in the written opinion of the court this
76 day delivered and filed, it is ordered, adjudged, and decreed that the writ of mandamus herein issued be made peremptory in so far as to order the respondents to place upon the next budget, or detailed estimate of liability and expenditures to be prepared by them in their official capacities, and upon succeeding budgets, until the same shall be paid in full, all judgments registered against the city of New Orleans pursuant to the provisions of act No. 5 of the extra session of 1870, prior to the 15th day of Feb'y, 1877, together with the judgment rendered in favor of relators herein and registered upon that day; and that with a view to the payment of said judgment, respondents be ordered to levy taxes to the extent of one dollar and seventy-five cents upon every hundred dollars of valuation as provided by section 19 of act No. 7 of the extra session of 1870.

It is further ordered that respondents pay the costs of this proceeding.

Judgment rendered January 31st, 1879, and signed February 5th, 1879.

(Signed) F. A. MONROE, *Judge.*

Motion & order of appeal.—Extract from minutes & filed Feb'y 5th, 1879,

3d dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25521.

77 On motion of E. H. McCaleb, esq., city att'y for the city of New Orleans, and on suggesting that said city of New Orleans is aggrieved by the final judgment herein rendered on the 31st January and signed on the 5th February, 1879, and desirous to appeal therefrom to the supreme court of Louisiana, it is ordered that a suspensive appeal be granted to the city of New Orleans from the final judgment herein rendered on the 31st day of January and signed on the 5th day of February, 1879, returnable to the supreme court at New Orleans on the 1st Monday of March, 1879.

Record No. 9837 of the sixth district court for the parish of Orleans, entitled "State of Louisiana on the relation of Folsom Brothers vs. the Mayor and Administrators of the City of New Orleans," offered in evidence by counsel for relator. Filed 10th January, 1879.

Petition.—Filed 21st February, 1878.

To the honorable the judge of the sixth district court for the parish of Orleans:

The petition of the State of Louisiana on the relation of Folsom

Brothers, a commercial firm domiciled in New Orleans, composed of George Folsom, who resides in the State of Mississippi, at Mag-
78 nolia, and of Henry Folsom, residing in the city and State of New York, with respect represents:

That on the 28th day of June, 1877, petitioners recovered a final judgment against the city of New Orleans, a municipal corporation of the State of Louisiana, in the suit No. 24751, in the third district court for the parish of Orleans, for the sum of twenty-six thousand eight hundred and fifty-eight dollars with interest and costs.

That after the said judgment became final, petitioners, in compliance with the statutes of the State of Louisiana, filed with the proper officers of said city a duly certified copy of the petition, answer, verdict, and final judgment rendered, with the amount of the costs incurred in said case, with the view and intention of having the same put in the budget of said city of the year 1878, of taxes to be collected by the said city for the said year, and petitioner is informed and so avers the fact to be that the same was so placed on said budget and taxes have been and are to be collected to pay the said judgment.

That relators have called on the proper officer of said city for the proportion of the taxes so collected for the payment and satisfaction of said judgment, and have been refused by the said city the payment of said proportion of taxes so collected for their benefit, under the
79 averment and pretense that the whole of the taxes collected by said city are necessary to support and maintain the city government, and that relators cannot have the amount for which they were placed for said judgment on the budget aforesaid.

Petitioner further represents that Guilfoux & Lee recovered in the superior district court for the parish of Orleans a final judgment against the said city of New Orleans, on the 15th June, 1874, for the sum of two thousand dollars, and thereafter transferred the same to relators and subrogated relators to all their rights against the said city, and relators, in compliance with the said statutes of the State, filed with the proper officer of said city the duly certified copy of the petition, answer, verdict, and judgment rendered in said case, being No. 2561 on the docket of said court as required by law, and the said judgment was placed on the budget of the said city as forming part of the amount of taxes to be collected and was embraced in the amount of taxes to be levied and collected by said city, and the said city has collected the proportion of said tax levied for the purpose of paying said judgment the property of said relators, but the said city has refused to pay
80 over to relators the amount of the taxes so collected as aforesaid, for the benefit of relators, and has applied and continues to apply the same to other purposes contrary to law and the rights of relators. And petitioners further aver that in compliance with the statutes of this State, sundry persons who have recovered judgments against the said city of New Orleans have filed with the proper officer of said city duly certified copies of their petitions, answers, and judgments, and the same have from time to time been placed on the several budgets of the said city for several years, the amounts of which were to be collected and paid over to the said several parties as fast as collected in the taxes of said city; that city has collected from time to time taxes which were collected for and should have been applied to the payment of said judgments as aforesaid, which should have been extinguished thereby, but the said sums of money so collected, instead of having been applied to the payment of said judgments have been diverted to some other purpose, and the said judgments still appear on the list of judg-

ments registered as due by the said city and as having a preference for payment over the two aforesaid judgments belonging to relators; that the said parties, judgment creditors of said city, by having sub-
81 mitted to the misappropriation of the moneys collected for their benefit as aforesaid, have lost their right of preference over relators, if any they ever had, and the said city of New Orleans by having misappropriated said sums of money, collected as aforesaid for the benefit of the said judgment creditors, has lost the right of setting said judgments up as judgments to be paid in preference to the two judgments owned by relators as aforesaid.

Petitioner avers that among the judgments registered to be paid by said city, placed in the budgets, was one registered on the 1st July, 1873, in favor of the commissioners of the New Orleans Park for seventy-eight thousand one hundred and seventy-two $\frac{17}{100}$ dollars, which judgment is extinguished by confusion, the said commissioners of the city park having been abolished by act of the legislature of Louisiana, approved 20th April, 1877, and all the powers and duties conferred by law on said park commissioners were transferred to and conferred on the city council of New Orleans, whereby all the powers of said park commissioners were vested in said city of New Orleans, and the said park commissioners in obedience of said law have transferred and delivered to said city all the papers, books, and assets of said park commis-
82 sioners. That said item of $78,172.12 should be stricken out of said registry, which would leave a sufficient sum collected in taxes to pay judgments, to pay and satisfy the two judgments of relators as aforesaid.

Petitioner avers that the acts of the said city of New Orleans in the premises are wrongful, and that it should be compelled to pay relators the amounts levied and collected, and to be levied and collected as taxes for the purpose of paying the aforesaid two judgments, the property of relators.

Wherefore petitioner prays that the city of New Orleans be ordered to show cause, on a day to be fixed by the court for that purpose, why a peremptory writ of mandamus shall not issue, ordering and compelling the said city, and its proper officers, viz: Edward Pilsbury, mayor; Jules C. Denis, administrator of finance; James G. Brown, administrator of accounts; John E. Reugstorff, administrator of assessments; John McCaffrey, administrator of improvements; James D. Edwards, administrator of water-works and public buildings; Charles Cavanac, administrator of commerce, and Robert E. Diamond, administrator of police, to strike out and erase from the registry of judgments the one in favor of the commissioners of the New Orleans Park, registered on July 1st, 1873, for $78,172.12; and further ordering and compelling them
83 to pay your relators said two judgments, one for twenty-six thousand eight hundred and fifty-eight dollars, with interest at five per cent. per annum from May 16th, 1873, and costs, and the other for two thousand dollars, interests and costs as aforesaid, and your relators pray for all and further relief as the nature of the case may admit.

(Signed) ROBERT MOTT,
Att'y of Relators.

(Signed) THOS. I. SEMMES,
Of Counsel.

Affidavit of George Folsom for writ of mandamus annexed to and made part of petition.—Filed 21st February, 1878.

Personally appeared George Folsom, one of the relators herein, who, being sworn, says that the facts contained in the foregoing petition are true.

(Signed) GEO. FOLSOM.

Sworn to and subscribed before me this 21st day of February, 1878.

[SEAL.] (Signed) R. C. MOTT,
Notary Public in and for the Parish of Orleans.

Order to issue writ of mandamus.

Let a writ of mandamus issue herein as prayed for, commanding the city of New Orleans, through its proper officers, to comply
84 with the demand of the relator herein as contained in the prayer of the within petition, or show cause to the contrary, on Monday the 11th day of March, eighteen hundred and seventy-eight, at 11 o'clock a. m.

New Orleans, February 21st, 1878.

(Signed) N. H. RIGHTOR, *Judge.*

Writ of mandamus, to be served on the city of New Orleans through its proper officers.—Issued 25th Feb'y, 1878.

STATE OF LOUISIANA:

Third district court for the parish of Orleans.

THE STATE OF LOUISIANA:

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 9837.

6th district court for the parish of Orleans.

To the city of New Orleans, through its proper officers, Edward Pilsbury, mayor; John McCaffrey, administrator of improvements; Robert E. Diamond, administrator of police; John E. Reugstorff, administrator of assessments; Charles Cavanac, administrator of commerce; J. G. Brown, administrator of accounts; James D. Edwards, administrator of water works and public buildings; and J. C. Denis, administrator of finance, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the sixth district court for the parish of Orleans, to comply with the demand of the relator herein, as contained in the prayer of
85 the petition, a copy of which accompanies this writ and is made a part hereof, or show cause to the contrary, on Monday, the 11th day of March, 1878, at 11 o'clock a. m.

And what you do in the premises you make return thereof, together with this writ, to our said court, as the law directs.

Witness the honorable N. H. Rightor, judge of our said court, this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and second year of the Independence of the United States.

[SEAL.] (Signed) H. MIESTER,
Deputy Clerk.

Return on writ of mandamus to the city of New Orleans through its proper officers.—Filed 2d & 6th March, 1878.

Received second March, 1878, and on the same day, month, and year served copy of within writ of mandamus and accompanying petition on Charles Cavanac, administrator of commerce, in person.

(Signed) WM. J. GRADY,
Deputy Sheriff.

And on the 6th day of the same month and year served copy of the within writ of mandamus and accompanying copy of petition on
86 John McCaffrey, administrator of improvements; on Edward Pilsbury, mayor; on Robert E. Diamond, administrator of police; on J. C. Denis, administrator of finance; on J. G. Brown, administrator of accounts, in person; on J. D. Edwards, through Edward Keena, chief clerk; on J. E. Reugstorff, administrator of assessments, through Charles J. Fletcher, chief clerk, in person; the said J. D. Edwards and J. E. Reugstorff being absent from their office at the time of said service.

Returned same day.

(Signed) WM. J. GRADY,
Deputy Sheriff.

Continuance of case.—Extract from minutes, 11th day of March, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 9837.

This case, assigned for trial on this day, was ordered to be continued to Tuesday, 26th instant, at eleven o'clock a. m.

Continuance of cause.—Extract from minutes, 26th day of March, 1878.

Sixth district court for the parish of Orleans.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 9837.

87 This case, assigned for trial on this day, on motion and by consent of counsel, was ordered to be continued to Tuesday, April 9th, 1878, at eleven o'clock a. m.

Answer of the city of New Orleans.—Filed 26th March, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 9837.

Now comes the city of New Orleans, and the mayor and administra

tors thereof, and show for cause why the mandamus should not issue against them as therein prayed for as follows, to wit:

That there is no money in the city treasury to the credit of the judgments now sought to be enforced, and no money collected or appropriated for the payment thereof, and therefore a writ of mandamus will not lie against these respondents to compel the said payment.

Respondents further say that no special tax is levied for the purpose of paying judgments, but that *on* certain amount is appropriated each year in the budget of city expenditures for that purpose, payable from the general fund; that the sum of dollars was appro-
88 priated out of the general fund for 1878 for the payment of judgments, and that but a small portion of the taxes of 1878 have yet been collected, and those collections were appropriated and have been used in the defrayal of the actual and necessary expenses of running the city government.

Respondent further say that, without estimating the judgment for park tax, there is an amount of over two hundred and sixty-four thousand dollars due in judgments registered against the city, prior to and which have preference over the judgment registered by relators (the judgment of which is now sought to be enforced), and judgments to the amount of over forty-three thousand dollars (exclusive of interest), registered prior to and having precedence over the judgment of Guilfoux & Lee, of which relators claim to be the transferrees, and respondents say that the monies received in the city treasury (when there shall be any), for the payment of judgments, must be appropriated to their payment in regular order of priority; and respondents say that this honorable court cannot change the said order of priority and payment, and cannot do so, at least, without full notice to the said holders of registered judgments claiming said priority.

Wherefore respondents pray that the petition of relators may
89 be dismissed with costs and for general relief.

(Signed) ED. PILSBURY,
Mayor of the City of New Orleans.

(Signed) B. F. JONAS,
City Attorney.

Personally appeared Edward Pilsbury, mayor; J. G. Brown, administrator of accounts, and J. C. Denis, administrator of finance, of the city of New Orleans, who, being duly sworn, say that all of the facts contained in the foregoing return are true to the best of their knowledge and belief.

(Signed) ED. PILSBURY,
Mayor.

(Signed) J. G. BROWN,
Administrator of Public Accounts.

(Signed) J. C. DENIS,
Administrator of Finance.

Sworn to and subscribed before me, New Orleans, March 26th, 1878.

[SEAL.] (Signed) J. PARIS CHILDRESS,
First Justice Peace.

Continuance of cause.—Extract from minutes 9th day of April, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 9837.

This case assigned for trial on this day, on motion and by consent of counsel was ordered to be continued to Tuesday, April 23d, 1878, at 11 o'clock a. m.

Continuance of rule.—Extract from minutes 23d April, 1878.

90 6th dist. court for the parish of Orleans.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 9837.

This rule fixed for this day not having been reached at the expiration of the rule hour was ordered to be continued until May 3d, 1878.

Continuance of cause.—Extract from minutes 3d May, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA. EX REL. FOLSOM BROS.
vs. No. 9837.
CITY OF NEW ORLEANS.

This cause assigned for trial on this day, by consent of counsel, was ordered to be continued to Friday, 17th inst., at 11 a. m.

Continuance of cause.—Extract from minutes 17th May, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 9837.

This case assigned for trial on this day, was ordered to be continued, with preference, to the 29th instant at eleven o'clock a. m.

Continuance of cause—Extract from minutes 29th May, 1878.

6th dist. court for the parish of Orleans.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 9837.

This cause assigned for trial on this day, was ordered to be continued.

91 Record No. 25495 of the docket of the third district court for the parish of Orleans, in the matter of the State ex rel. Folsom Brothers vs. Mayor and Administrators of the City of New Orleans, offered in evidence by counsel for relator on the 10th day of January, 1870.

Petition for mandamus.—Filed 30th November, 1878.

To the honorable the judge of the third district court for the parish of Orleans.

The petition of the State of Louisiana on the relation of Folsom Brothers, a commercial firm domiciled in New Orleans, composed of George Folsom, who resides in the State of Mississippi, at Magnolia, and of Henry Folsom, residing in the city and State of New York, with respect represents:

That on the 28th day of June, 1877, petitioners recovered a final judgment against the city of New Orleans, a municipal corporation of the State of Louisiana, in the suit No. 24751 in the third district court for the parish of Orleans for the sum of twenty-six thousand eight hundred and fifty dollars with interest and costs.

That after the said judgment became final petitioners, in compliance with the statutes of the State of Louisiana, filed with the proper officer of said city a duly certified copy of the petition, answer,
92 verdict, and final judgment rendered, with the amount of the costs incurred in the said case, with the view and intention of having the same put on the budget of said city of the year 1878 of taxes to be collected by the said city for the said year, and succeeding years; and petitioner is informed and so avers the fact to be, that the same was so placed on said budget, and taxes should have been collected to pay the said judgment. That relators have called on the proper officer of said city for the proportion of the taxes so collected for the payment and satisfaction of said judgment, and have been refused by the said city the payment of any proportion of taxes so collected, under the averment of the whole of the taxes collected by said city are necessary to support and maintain the city government, and that the relators cannot have the amount for which they were placed for said judgment on the budget aforesaid.

Petitioner further represents that Guilfoux and Lee recovered in the superior district court for the parish of Orleans, a final judgment against the said city of New Orleans, on the 15th June, 1874, for the sum of two thousand dollars, and thereafter transferred the same to relators, and subrogated relators to all their rights against the said city, and relators, in compliance with the said statutes of the State, filed with the proper officer of the city, the duly certified copy of the petition, answer, verdict, and judgment rendered in said case, being No. 2351 on the docket of said
93 court as required by law, and said judgment was placed on the budget of the said city as forming part of the amount of taxes to be collected, and was embraced in the amount of taxes to be levied and collected by said city, and the said city has collected the proportion of said tax levied for that purpose of paying said judgment the property of relators; but the said city has refused to pay over to relators the amount of the taxes so collected as aforesaid, for the benefit of relators, and has applied and continues to apply the same to other purposes, contrary to law and the right of relators.

And petitioner further avers that in compliance with the statutes of

this State, sundry persons who have recovered judgments against the said city of New Orleans, have filed with the the proper officer of said city duly certified copies of their petitions, answers, verdicts, and judgments, and the same or a portion of the same have from time to time been placed upon the several budgets of the said city for several years, the amounts of which were to be collected and paid over to the said several parties as fast as collected in the taxes of said city.

That said city has collected from time to time taxes which were collected for and should have been applied to the payment of said
94 judgments as aforesaid, which should have been extinguished wholly or in part thereby, but the said sums of money so collected, instead of having been applied to the payment of said judgments, have been diverted to some other purpose, and the said judgments still appear on the list of judgments registered as due by the said city, and as having a preference for payment over the two aforesaid judgments belonging to relators.

Petitioners aver that by law they cannot issue execution against the said city, and that it is provided that all judgments rendered against the said city shall be duly registered by the proper officer thereof, and and that the whole amount of all of said judgments should be put upon the budget of taxes to be collected, and the amount so placed upon the budget should be levied as a tax upon the whole taxable property of New Orleans, in addition to the other amounts to be levied as taxes, and that the amount so levied for the payment of the said registered judgments should be placed in the treasury of the city to the credit of said registered judgments to be applied to their payment in the order of their priority of registry.

Petitioners aver that the administrators of the said city of
95 New Orleans have neglected and refused to put upon the budget of taxes heretofore made up, the amount of said several judgments that have been registered as aforesaid according to law, to a sufficient amount to provide for the payment of said judgments out of the taxes to be collected as aforesaid, and by law they could be compelled to do so that petitioners may in due time be paid the amount due them.

Wherefore,relators pray that the city of New Orleans be ordered to show cause on a day to be fixed by the court for that purpose, why a peremptory writ of mandamus should not issue, ordering and compeling the said city of New Orleans and its proper officers, viz: Isaac W. Patton, mayor; A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; Washington Marks, administrator of assessments; J. D. Houston, administrator of improvements; E. R. Chevalley, administrator of water-works and public buildings; J. Henry Behan, administrator of commerce; and Patrick Meallie, administrator of police, to place upon the budget for taxes for the year 1879 and all succeeding years until the same be fully paid all the judgments, including those of relators which have been registered according to law, in addition to the other taxes to be levied according to law, and
96 thus provide and collect a fund to pay and satisfy the whole of said registered judgments and for general relief.

(Signed) ROBERT MOTT,
Attorney of Plaintiffs.

(Signed) T. T. SEMMES,
Of Counsel.

Affidavit of George Folsom relator herein.—Filed 30th November, 1878.

Personally appeared George Folsom, one of the relators herein, who, being sworn, says that the facts contained in the foregoing petition are true.

(Signed) GEORGE FOLSOM.

Sworn to and subscribed before me this 29th day of November, 1878.

[SEAL.] (Signed) R. C. MOTT,
Notary Public in and for the Parish of New Orleans, Louisiana.

Order to issue writ of mandamus.

Let a writ of mandamus issue in this case as prayed for & according to law, commanding the mayor and administrators of the city of New Orleans to comply with the demand of the within petition, or show cause to the contrary on Monday the 9th day of December, 1878, at eleven o'clock a. m.

New Orleans, November 30th, 1878.

(Signed) F. A. MONROE, *Judge.*

97 *Writ of mandamus served on the city of New Orleans through its proper officers and the mayor and administrators of the city of New Orleans.—Issued 4th December*, 1878.

State of Louisiana, third district court for the parish of Orleans.

THE STATE OF LOUISIANA:

3rd dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROTHERS
vs.
MAYOR AND ADMINISTRATORS OF THE CITY of New Orleans. } No. 25495.

To—

1st. The city of New Orleans through its proper officer.
2nd. I. W. Patton, mayor of the city of New Orleans.
3rd. A. H. *A. H.* Isaacson, administrator of finance.
4th. John Glynn, jr., administrator of accounts.
5th. Washington Marks, administrator of assessments.
6th. J. D. Houston, administrator of improvements.
7th. E. R. Chevalley, administrator of water-works and public buildings.
8th. J. Henry Behan, administrator of commerce.
9th. Patrick Meallie, administrator of police, all of the city of New Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the third district court for the parish of Orleans, to comply with the demand of the petition, a true copy whereof accompannies this
98 writ, or show cause to the contrary on Monday, the ninth day of December, 1878, at eleven o'clock a. m.

Witness the honorable F. A. Monroe, judge of our said court, this fourth day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and third year of the Independence of the United States.

[SEAL.] (Signed) JOE. GARIDEL,
Deputy Clerk.

Return on writ of mandamus to the city of New Orleans, through its proper officer, and the mayor and administrators of the city of New Orleans.—Filed 5th Dec., 1878.

Received december 4th, 1878, and on December 5th, 1878, I served a copy of the within writ of mandamus and petition on the city of New Orleans through I. W. Patton, mayor, in person, and on I. W. Patton, mayor, personally, and on A. H. Isaacson, administrator of finance, in person, and on John Glynn, jr., administrator of accounts, in person, and on Washington Marks, administrator of assessments, through Theodore Marks, his chief clerk, in person, and on J. D. Houston, administrator of improvements, personally, and on J. Henry Behan, administrator of commerce, in person, and on E. R. Chevalley, administrator of water-works and public buildings, in person, and on Pat. Meallie, administrator of police, in person.

Returned same day.

(Signed) S. W. COTTON,
Deputy Sheriff.

Return and answer of the mayor and administrators of the city of New Orleans.—Filed 9th Dec., 1878.

3rd dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25495.

Now comes the mayor and administrators of the city of New Orleans, who, for exception and answer to the order herein issued upon them, to show cause why they should not comply with the demand of the relators, say:

1st. That said petition discloses no cause of action in this: (A) that it contains contradictory allegations; (B) that it alleges that taxes have been assessed and collected to pay relators' judgments, but have been wrongfully diverted to other purposes, under which allegations relators would have a cause of action in damages against the officers of the city and the sureties on their official bond under section 4 of act No. 5, of extra session of 1870, but under which allegations they are not entitled to the writ of mandamus as prayed for; (C) that inasmuch as relators aver that all has been done by the city which legally ought to have been done, they are not entitled to the writ of mandamus; (D) that relators do not allege any amicable demand upon your respondents to perform the act which relator herein seeks to force by mandamus, nor do they allege any refusal on the part of these respondents so to act.

Wherefore respondents pray that these exceptions be maintained and that relators' demand be rejected with costs. And should such exception be overruled and not otherwise, then for answer respondents say they deny all and singular the allegations in said petition contained, and specially deny that there has been any such diversion of funds as the relators allege.

Further answering, respondents say that the taxes levied and assessed as averred by relators out of which relators are by law required to be paid are now in process of collection; that because of the delinquency

and default of many taxpayers the city of New Orleans has been compelled to institute judicial proceedings to enforce the collection of said taxes, which proceedings said city is now prosecuting with due diligence, and that pending these proceedings relator is not entitled to anticipate the result and to cause an additional levy to be made for the purpose of paying the judgments owned by them.

101 That the revenues of each year of the city of New Orleans are devoted by section 3rd of act No. 30 of the extra session of 1877 to the payment of the expenditures of that year, and that it is only such surplus as may remain after the payment of the expenses of any year that can be legally appropriated to the payment of the indebtedness of any former year; that inasmuch as the taxing power of the city of New Orleans is limited to one and a half (1½) per cent., the anticipated revenues of said city for the year 1879 from all sources will not be more than sufficient to pay the necessary current expenses for the year 1879, and no surplus will remain which can be applied to the extinguishment of relators' judgments; that the city has in her treasury no surplus of any kind or nature whatever from which appropriations could be made to pay said judgments; that the assessed value of all taxable property in the city of New Orleans for the year 1879, and for two years thereafter, is only one hundred and eleven millions of dollars, or thereabouts; that the city is encumbered with a debt exceeding twenty one millions of dollars in amount; that owing to these facts and to the provisions of law prohibiting the city from making any appropriations in excess of the actual revenue for any year and prohibiting her from imposing a tax exceeding 1½ per cent., the revenue which will accrue to

102 the city during the year 1879 will hardly be sufficient to enable her to perform the necessary functions of government which are paramount in importance and in right to the claims which relators have upon said city; that there are registered judgments against the city of New Orleans exceeding five hundred thousand dollars in amount which are entitled to be paid by priority over the judgments of relators, and that for those reasons the budgeting of relators' judgments would be a vain thing.

Wherefore respondents pray that relators' demand be rejected with costs.

(Signed) E. HOWARD McCALEB,
City Attorney for Respondents.

(Signed) E. H. FANAR,
Of Counsel.

Continuance on cause.—Extract from minutes 9th day December, 1878.

3rd dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25495.

This case came on this day for trial.

Present, R. Mott, for relators; E. Howard McCaleb, city att'y, for respondents.

103 After hearing argument of counsel upon the exceptions of respondents till the expiration of the rule hour, the court ordered that this matter be continued for further argument to the 10th instant, at 11 o'clock a. m.

Continuance on exceptions.—Extract from minutes 10th December, 1878.

3rd dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25495.

The exceptions herein came on this day to be argued. Present, counsel for both parties.

After hearing further argument of counsel till the expiration of the rule hour, the court continued the matter until to-morrow at 11 o'clock a. m.

Discontinuance of suit.—Extract from minutes 11th day December, 1878.

3rd dist. court for the parish of Orleans.

STATE EX REL. FOLSOM BROS.
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 25495.

On motion of R. Mott, attorney for relators, it is ordered that this suit be discontinued at the costs of the relators.

104 *Certificate of clerk.*

STATE OF LOUISIANA:

I, Benjamin Armbruster, clerk of the third district court for the parish of Orleans, do hereby certify that the foregoing one hundred and forty-six (146) pages do contain a complete, true and correct transcript of all the proceedings had, of all the evidence adduced, and of all the documents filed in and on the trial of the cause entitled: State of La. ex rel. Folsom Brothers vs. The Mayor and administrators of the city of New Orleans, No. 25521 of the docket of said third district court for this parish.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on the first day of March, in the year of our Lord one thousand eight hundred and seventy-nine, and in the 103 year of the Independence of the United States.

[SEAL.] (Signed) BEN. ARMBRUSTER,
Clerk.

105 *Order for summary docket.—Filed March 5th*, 1879.

STATE OF LOUISIANA,
City of New Orleans:

Supreme court of the State of Louisiana.

STATE OF LOUISIANA EX REL. FOLSOM BROTHERS
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

The clerk of the supreme court will please put this case on the prefer

ence docket, the same being a mandamus case and a summary case according to law.

New Orleans, March 5th, 1879.

(Signed) ROBERT MOTT,
For Relator.

Order to submit.—Filed March 25th, 1879.

Supreme court of Louisiana.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

The clerk will please submit this case on the briefs on file, if reached.

(Signed) ROBERT MOTT,
For Appellees.

Motion for additional transcript.—Filed M'ch 25th, 1879.

106 Supreme court of Louisiana.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

On motion of Robert Mott, of counsel of relators, and on suggesting a diminution of the record in this, that the clerk has omitted to copy into the transcript the final judgment rendered on the decree of this honorable court with the mandate of this court in the case of Folsom Bros. vs. The City of New Orleans, altho' the same was offered in evidence on the trial of this case, it is ordered that the clerk of the third district court for the parish of Orleans do make and file in this court an additional transcript containing the said omitted evidence.

Service accepted.

(Signed) BEN. ARMBRUSTER,
Clerk 3d Dist. Court, Parish of Orleans.

Motion for certiorari.—Extract from the minutes, Tuesday, March 25th, 1879.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, Wm. B. Spencer, Edward D. White, associate justices.

107 Supreme court of Louisiana.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

On motion of Robert Mott, esq're, of counsel for plaintiffs, it is ordered by the court that a writ of certiorari issue to the clerk of the lower court,

commanding him to correct and complete the transcript of appeal in this case in compliance with the requirements of the written motion on file, and to return the whole properly certified to this court.

Supplemental transcript X.—Filed March 25th, 1879.

Supreme court of Louisiana.

STATE OF LA. EX REL. FOLSOM BROTHERS
vs.
MAYOR AND ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

Supplemental transcript to be filed in the honorable supreme court of the State of Louisiana, in the suit entitled State of Louisiana ex rel. Folsom Brothers vs. The Mayor and Administrators of the city of New Orleans, No. 25521 of the docket of the third district court for the parish of Orleans.

Opinion and decree of the supreme court of the State of La., in the
108 *matter of Folsom Brothers vs. The City of New Orleans, No. 5300 of said supreme court of Louisiana, and No. 3510 of the late superior district court for the parish of Orleans, transferred by law to the third district court for the parish of Orleans under the No. 24751 of said third district court of this parish.—Filed 28th June*, 1877.

Supreme court of the State of Louisiana.

CLERK'S OFFICE,
New Orleans, December 18th, 1876.

FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 5300.

Appeal from the superior district court for the parish of Orleans.

Mr. Justice Leonard delivered the opinion and decree of the court in the words and figures following, to wit:

The plaintiffs bring this suit against the city for damages to their property caused by a mob on the night of May 6th, 1873. Section 2453 of the Revised Statutes declares that the "different municipal corporations of this State shall be liable for the damages done to property by mobs or riotous assemblages in their respective limits." The lia-
109 bility of cities and towns under the provision of this statute is no longer an open question. (Williams vs. City of New Orleans, 23 A., 507.)

The present case was tried by a jury in the court below, who gave the plaintiffs fifteen thousand dollars. They thought the sum too small, and have appealed. The city appears to be fully satisfied with the verdict.

There seems to be no question about the occurrence of the riot, and that plaintiff's store was broken into and pillaged by the mob. The amount of the damage sustained is the only matter in controversy. Mr. George Folsom, one of the plaintiffs, swears that the firm sustained loss by the riot to the amount of twenty-six thousand and eight hundred and

fifty-eight dollars, as detailed in an itemized statement annexed to the petition; that this statement was made out immediately after the riot, and that only those articles were put down which were known to have been taken away. The values charged are the wholesale cash prices.

Mr. Folsom further testifies that the actual damage sustained by the firm was greater than the amount charged to the city, and that the articles taken away could not be replaced for that sum at the time of the riot.

Mr. Thomas T. Moore, an employee of plaintiffs, swears that
110 every item charged to the city was actually lost by the firm on the night of the riot.

Mr. W. R. B. Turner, another employee, testifies that he assisted in making up the statement, and that the amount charged is less than the actual loss.

We regret that the representatives of the city did not see proper to institute a more careful scrutiny into a matter which involved the payment by the tax-payers of so large a sum of money. As it was, they did not call a single witness, nor did they apparently make any effort to ascertain for themselves the amount of the city's liability. It might have been well, also, to have cross examined the plaintiffs and their clerks more vigorously with regard to each item of loss charged in the statement. As it is, we have no alternative but to accept the uncontradicted testimony of these witnesses as accurate and conclusive. It is therefore ordered, adjudged, and decreed that the verdict of the jury be set aside; that the judgment of the superior district court be annulled, and that plaintiffs recover of defendant, The City of New Orleans, the sum of twenty-six thousand eight hundred and fifty-eight dollars, with 5 % interest from May 16th, 1873, and costs of both courts.

A true copy.
(Signed) M. P. JULIAN,
Deputy Clerk.

111 *Motion and order to record decree of the supreme court.—Extract from minutes, Thursday, June 28th,* 1877.

3d dist. court, parish of Orleans.

FOLSOM BROTHERS
vs.
CITY OF NEW ORLEANS. } No. 24751.

On motion of Semmes & Mott, of counsel for plaintiffs, it is ordered that the decree of the supreme court of Louisiana rendered in this case be spread on the minutes.

DECREE.

"It is ordered, adjudged and decreed that the verdict of the jury be set aside; that the judgment of the superior district court be annulled, and that plaintiffs recover of defendant, The City of New Orleans, the sum of twenty-six thousand eight hundred and fifty-eight dollars, with 5 % interest from May 16th, 1873, and costs of both courts."

CERTIFICATE OF CLERK.

STATE OF LOUISIANA:

Third district court, parish of Orleans.

I, Benjamin Armbruster, clerk of the third district court for the parish of Orleans, do hereby certify that the foregoing six (6) pages do contain a true and correct copy of the original proceedings had and now on file in this court in the matter of Folsom Brothers vs. City of New Orleans, No. 24751 of our said court, which said proceedings are
112 now copied in obedience to a writ of certiorari issued by the hon. supreme court to the clerk of this court, to be used as a supplemental transcript in the suit entitled State of La. ex rel. Folsom Brothers vs. City of New Orleans, No. 25521 of the docket of said court, now on appeal to the supreme court.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at the city of New Orleans, on the 17th day of March, 1879, and in the 103rd year of the Independence of the United States of America.

[SEAL.] (Signed) BEN. ARMBRUSTER, *Clerk.*

Continuance.—Extract from the minutes, March 25th, 1879.

Supreme court of La.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA. EX REL. FOLSOM BROTHERS,
vs.
THE MAYOR & ADMINISTRATORS OF THE CITY of New Orleans. } 7447.

This case was ordered by the court to be continued with preference.

113 *Order to submit.—Filed 22d April*, 1879.

Supreme court of the State of Louisiana.

STATE OF LA. EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

To the clerk:

If reached and I am absent, please submit.

(Signed) ROBERT MOTT.

N. ORLEANS, *22d April*, 1879.

Continued with preference.—Extract from the minutes, Tuesday, April 22d, 1879.

Supreme court of the State of La.

The court was duly opened. Present, their honors Thomas C. Man-

ning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA. EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

This case was ordered by the court to be continued with preference.

Order, case submitted.—Extract from the minutes, Tuesday, May 6th, 1879.

114 Supreme court of the State of Louisiana.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

This case is submitted to the court by counsel for parties in interest upon the briefs and papers now on file.

Order to reinstate.—Extract from the minutes, Wednesday, May 7th, 1879.

Supreme court of the State of Louisiana.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert C. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

It is ordered by the court that the order of the 6th instant, per-
115 mitting the submission of this case be rescinded, and that said case be reinstated on the docket for trial in due course.

Continued with preference.—Extract from the minutes, Tuesday, November 4th, 1879.

Supreme court of the State of La.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

This case was called for trial. Whereupon, on motion of Robert Mott,

esq., of counsel for plaintiffs, the court ordered the same to be continued with preference.

Order case submitted.—Extract from the minutes, Tuesday, December 2d 1879.

Supreme court of the State of Louisiana.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, Robert H. Marr, Alcibiade De Blanc, Wm. B. Spencer, Edward D. White, associate justices.

116 STATE OF LA., EX REL. FOLSOM Brothers, *vs.* MAYOR & ADMINISTRATORS OF THE CITY of New Orleans. } No. 7447.

This case was called for trial, and having heard argument from Robert Mott and Thomas I. Semmes, of counsel for plaintiffs and appellees, and from E. Howard McCaleb, esq., city attorney, on behalf of the defendants, appellants herein, the court took said case under advisement upon the briefs now on file for both parties.

Order case reinstated for argument.—Extract from the minutes, Monday, January 19th, 1880.

Supreme court of the State of Louisiana.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS, *vs.* MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

This cause is reassigned for oral argument, and the attention of counsel is called to the 15th section of the act of 1872, to be found on page 127 of the acts of that year.

117 *Order case submitted.—Extract from the minutes, Friday, March 5th,* 1880.

Supreme court of the State of Louisiana.

The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Spencer, Edward D. White, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS, *vs.* MAYOR & ADMINISTRATORS OF THE CITY of New Orleans. } No. 7447.

This case was called for trial, and having heard argument from Thomas

I. Semmes, esq., of counsel for plaintiffs and appellees, the court took said case under advisement upon the briefs and papers now on file.

Motion and order to fix.—Extract from the minutes, Tuesday, April 20th, 1880.

Supreme court of the State of Louisiana.

The court was duly opened. Present, their honors Edward Bermudez, chief justice, and Félix P. Poché, Robert B. Todd, William M. Levy, Charles E. Feuner, associate justices.

STATE OF LA., EX REL. FOLSOM BROS.,
vs.
MAYOR & ADMINISTRATORS OF THE CITY of New Orleans. } No. 7447.

118 On motion of Robert Mott and Thomas I. Semmes, esquires, of counsel for the plaintiffs, appellees, it is ordered by the court that this cause be reassigned and set down for trial on Saturday, the 24th inst., immediately after the State cases on the docket of that day.

Order case submitted.—Extract from the minutes, Saturday, April 24th, 1880.

Supreme court of the State of Louisiana.

The court was duly opened. Present, their honors Edward Bermudez, chief justice, and Félix P. Poché, Robert B. Todd, William M. Levy, Charles E. Feuner, associate justices.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY of New Orleans. } No. 7447.

This case was called for trial, and having heard argument from Thomas I. Semmes and Robert Mott, of counsel for the plaintiffs and appellees, and from E. Howard Farrar, esq., of counsel for the defendants and appellants herein, the court took said case under advisement upon the briefs now on file for both parties.

119 *Opinion.—Filed May 17th,* 1880.

Supreme court of La.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR AND ADMINISTRATORS OF THE CITY of New Orleans. } No. 7447.

Folsom Bros., relators herein, are holders of two judgments against the city of New Orleans, the same being for damages done to their property by a mob or riotous assemblage within the limits of said city, in 1873, for which the city was liable under section 2453 of the Revised Statutes. One of said judgments, for $2,000, became final on July 3d,

1874, the other for $26,858.00 became final in December, 1877; they were properly registered in the office of the administrator of public accounts on January 15th, 1876, and January 15th, 1877, respectively, in accordance with the provisions of act No. 5, extra session of 1870. In their petition herein they state the foregoing facts, and further aver that other judgments against the city to a large amount had been registered prior to their own, and that it was the duty of the city officers to place them all on the budget and to levy and collect taxes to pay them; that said city officers had failed and refused to perform said duty; that being prohibited by law from issuing executions upon their said judgments, they are without other remedy except through the levy of taxes for their payment, and that the refusal of the city to levy such
120 taxes deprives them of all remedy and is in violation of their vested rights and of the constitutions and laws of the United States and of the State. They prayed for a writ of mandamus commanding the proper officers of the city to place upon the budget for the year 1879, and all succeeding years until the same be fully paid, all the registered judgments, including those of relators, and to impose taxes in addition to all other taxes required for other expenses to an amount sufficient to pay and satisfy the whole of said registered judgments.

The officers of the city made returns substantially that, under the provisions of act No. 31 of 1876, the power of the city to levy taxes for any purpose whatever was limited to one and one half per cent. upon the assessed value of taxable property; that the necessary alimony of the government must be provided for before debts can be paid; and that the revenues derived from taxation to the aforesaid limit of the law, and from all other sources, would not be sufficient to provide for the said necessary alimony of the city government.

The learned judge of the lower court was of opinion that under section 19 of act No. 7 of 1870, which was in force in 1873, at the time when the causes of action upon which relators' judgments were rendered originated, the taxing power of the city was only limited
121 to one and three-quarters per cent.; that this taxing power so fixed constituted the sole remedy for the enforcement of their claims; that the right to diminish or destroy this taxing power involved the diminution or destruction of the sole remedy of relators, and could not be exercised to the prejudice of relators' vested right to such remedy.

The court, therefore, made the mandamus peremptory so far as to order the budgeting of all judgments as prayed for, in succeeding years; and that, with a view to the payment thereof, respondent be ordered to levy taxes to the extent of one and three-quarters per cent., as prescribed by section 19 of act No. 7 of the extra session of 1870.

From this judgment, which was signed on February 5th, 1877, the city took this suspensive appeal.

The first thing that attracts judicial cognizance on the very face of this record is that any decree rendered by us herein, ordering the levy of taxes by the city of New Orleans, must operate prospectively only. The past is beyond recall and beyond remedy. If we should affirm the decree appealed from, the effect would be to order the city of New Orleans, in its next and succeeding tax levies, to impose and collect a tax of one and three quarters per cent. until all the judgments referred to in the decree are settled. The mere statement of this proposition irresistibly recalls the provision of article 209 of the constitution
122 of 1879, which provides that "no parish or municipal tax, for all

purposes whatever, shall exceed ten mills on the dollar of valuation."

It is impossible to conceive of any form of expression in which the intention of the framers of the constitution to restrict absolutely the power of municipal taxation within the limit of ten mills on the dollar, could be more positively asserted.

A tax levied by the city of New Orleans is unquestionably a "municipal tax." Such a tax levied for the purpose of paying debts is yet a tax levied for a purpose, and falls within the all-embracing expression "all purposes whatever," and when thus much has been said, it involves the inevitable conclusion that if the constitutional provision is to be operative and is not restrained in its effect by some higher authority, the city has not the power to levy a tax in excess of ten mills on the dollar, and we cannot compel the city to exercise a power which it does not possess.

Attempt is made by counsel for relator to restrict the limitation of this constitutional provision to taxation for the ordinary purposes of government. If such had been the intention of the framers, it would have been easily and naturally expressed. The language used not only does not convey, but absolutely excludes such construction of its meaning. It is, besides, notorious that the object of the limitation was
123 not merely to restrain the extravagance of administrators of municipal corporations, but to relieve property from the burden of excessive taxation. The cases relied on to impose this restrictive meaning upon the clause referred to are without application. McCracken vs. San Francisco, 16th California, 591, applied to an article of a city charter providing that the common council shall not create nor permit to accrue any debts or liabilities which shall exceed $50,000.00 over and above the annual revenues of the city, and held that this only applied to voluntary acts or contracts of the council creating liabilities and not to liabilities cast upon her by the law, independent of any contract or permission of the council. Such appears to us to be the only possible meaning that could be derived from the language used in the charter itself, and we see nothing in that case that touches the one at bar.

The case of Butz vs. Muscatine, 8th Wallace, 575, has still less application. There, it is true, there was a provision in the charter of the city of Muscatine limiting the power of taxation to one per cent., but there were also co-existing provisions in the general laws of the State requiring corporations against which judgments had been rendered, after execution returned unsatisfied, to levy a tax as early as practicable to pay off such judgments. In effect, the court merely held that the
124 restriction in the charter did not repeal said general laws and did not apply to the duty of corporations thereunder to levy taxes to pay judgments. It is evident we have here no such co-existing statutes to be interpreted together; nor was the language of the Muscatine charter so broad as that of our constitution.

Moreover, in the subsequent case of U. S. vs. Supervisors, 18 Wall., 71, the decision in the above case was substantially overruled. Having thus determined the meaning of this constitutional provision, let us now examine the power of the constitutional convention to pass such a provision.

The learned judge of the lower court, in his able opinion, was dealing with questions very different from those which we are now discussing. He was considering the effect of mere legislative acts. He held that inasmuch as, at the time when the obligation sought to be enforced by relators originated, the city had the power to levy a tax of one and three-

quarters per cent., and as the sole remedy for the enforcement of said obligation was through the exercise of said taxing power, therefore, "if that power could be diminished by subsequent legislation, it might, with the same propriety, be withdrawn altogether." That, he said, could not be done. Why? Because, in his own language, "it would operate a divestiture of the remedial right which had existed in the relators." In other words, the judge held that the subsequent legislative acts restricting the city's power of taxation could not apply to relators' right previously existing, because such application would operate to divest a vested right, in violation of art. 110 of the constitution of the State there in force.

It is unnecessary for us to review the decision of the district judge on this point, because the limitation on the power of the legislature, imposed by the constitution of 1868, has no force over the power of the constitutional convention.

A constitution framed by a convention of the people, especially after having been submitted to and ratified by a direct vote of the people, is the ultimate expression of the will of the sovereignty itself. Its provisions may control, with plenary power, all private and social rights, and all existing laws and institutions, and may even violate the most fundamental rules of justice; provided only they do not conflict with the provisions of the Constitution of the United States, which, with regard to the subjects covered by them, and to those subjects alone, form the paramount law of the land. No court has the right to question the validity of any provision of a State constitution, however unwise, impolitic, or even unjust it may be, upon any other ground whatever than that it violates the Constitution of the United States. (Cooley on Const'l Lim'on, p. 34.) It follows, therefore, that the provision of the constitution of 1879 must have full operation and effect against all persons and against all rights, except so far as its operation is restrained by the Constitution of the United States. It follows, to come more directly to the exact point at issue here, that no person can require the city of New Orleans to levy a greater tax than one per cent. unless he can establish a right in himself to require the levy of such higher tax, and unless he can also show that said right is so protected by the Constitution of the United States that it could not be taken away by any action of the State. If the State can destroy such right it has destroyed it by this provision of its constitution. To begin with, it is settled by an uninterrupted current of authorities that a State may pass laws divesting vested rights without infringing the Constitution of the United States.

(Charles River Bridge vs. Warren, 11 Pet., 420; Watson vs. Mercer, 8 id., 88; Sutterlee vs. Mathewson, 2 id., 413; Railroad Co. vs. Nesbitt, 10 How., 395; Matter of Oliver Lee and Co.'s Bank, 21 N. Y., 9.)

The only provision of the U. S. Constitution which could be invoked as protecting relator's alleged right here are,

1st. The provision forbidding a State to pass any law impairing the obligation of a contract.

2nd. The provision of the 14th amendment forbidding the State to "deprive any person of life, liberty, or property without due process of law."

The first provision has no application here. Relator has no right of any kind arising from a contract, express or implied, and no other rights are within the protection of this provision. It is settled that claims arising from a tort, and not from a contract, are not so protected.

(Dash vs. Paukleck, 7 John., 477; Amy vs. Smith, 1 Litt., 326; Thayer vs. Seavey, 11 Me., 284.)

The position of counsel that this is not an obligation arising from a tort, but an obligation imposed by law on the city, in favor of a third person and in the nature of a stipulation pour autrui accepted by such third person, and therefore equivalent to a contract, is not sustained by any authority. The only case in which we have found that question adverted to holds distinctly that "those rights which the law gives to or obligations which it imposes upon persons in certain relations, independently of any stipulations which the parties themselves have made," are not within the protection of this clause. (Robinson vs. Howe, 13 Wis., 341.)

We are, however, unable to perceive any distinction between
128 the obligations arising under section 2453 of the Revised Statutes and those arising under the articles of the civil code relative to offenses and quasi offenses. It merely expressly extends to municipal corporations that responsibility for damage occasioned by their fault or negligence, or by the fault or negligence of their servants or overseers, which rests upon natural person under articles 2315, 2316 and 2320 of the civil code. It has been a subject of frequent judicial discussion and of contradictory decisions, whether or not such responsibility would not attach even in absence of such special statute, on the grounds that powers are granted to municipal corporations especially designed to enable them to preserve peace and order, and that it is their duty so to exercise such powers as to afford adequate protection to property against mobs and riots. It cannot be doubted that these principles are the underlying reasons of the statute. But, whatever may be the source of these obligations, it is plain they do not spring from contract. It is suggested, however, that whatever may have been the origin of relator's rights against the city, his judgments, at least, are contracts and within the protection of this constitutional clause. We are unable to discover any principle upon which to base such a doctrine. In the early and leading case of Fletcher vs. Peck, 6 Cranch, p. 136, Chief Justice.
129 Marshall, in defining what is meant by the word contract, as used in this very clause, said: "A contract is a compact between two or more parties." In the later case of Green vs. Biddle (8 Wh., 92) the word contract, in the same connection, was defined to be "the agreement of two or more parties to do or not to do certain acts." It thus appears, from the decisions of the highest Federal tribunal, that the word "contract" as used in the Constitution is to be interpreted according to the meaning attached to it in ordinary language, and under all systems of law.

We are at a loss to perceive what features of such a contract attach to judgments as such. Far from being agreements or compacts between the parties, they are usually the sequence of violent contests, and are imposed upon the losing party by a higher authority, against his will and protest. It has been distinctly held by high authority that "a judgment is not an agreement, contract, or promise in writing." (Todd vs. Crumb, 5 McLean, 172.) The Supreme Court of the United States has expressed its opinion upon this question in terms which, though perhaps obiter, leave no doubt that the views here expressed by us would receive its sanction. It said: "It may be doubted whether a judgment not founded upon an agreement, express or implied, is a contract within the meaning of the constitutional prohibition." It is sometimes called by text writers a contract of record, because it establishes a legal
130 obligation to pay the amount recovered, and, by fiction of law,

where there is a legal obligation to pay, a promise to pay is implied; but it is not perceived how this fiction can convert the result of a proceeding not founded upon an agreement, express or implied, but upon a transaction wanting the assent of the parties, into a contract within the meaning of the clause of the Federal Constitution which forbids any legislation impairing its obligation.

The purpose of the constitutional prohibition was the maintenance of good faith in the stipulations of parties against any State interference. If no assent be given to a transaction, no faith is pledged with respect to it, and there would seem in such case to be no room for the operation of the prohibition. (Garrison vs. City, 21 Wall., 203.) These views are in harmony with the reasons and principles underlying the constitutional provision referred to, and we have no hesitation in adopting them. (See also Forsyth vs. Marbury, R. M. Charlt., 324.)

2nd. It is next contended that this restriction in the constitution of 1879, quoad the rights of relators, violates that provision of the 14th amendment to the Constitution of the United States forbidding the State "to deprive any person of life, liberty, or property without due process of law."

It cannot be, nor to our knowledge has it ever been, contended
131 that this provision is the equivalent, in meaning and effect, of those provisions so common in State constitutions which forbade the passage of laws divesting vested rights.

It is not necessary for us to refer to the many limitations which were imposed by judicial interpretation upon the terms "vested rights," even under those express provisions. The 14th amendment, by its very terms, refers only to property, and no vested rights can be included within that term by any stretch of interpretation, except vested rights in & to property, giving to the word property its broadest signification, so as to include everything susceptible of ownership, movable or immovable, corporeal or incorporeal. It cannot possibly be extended to remedies given merely for the enforcement of property rights. Still less can the power of taxation of a municipal corporation be a subject of ownership by any individual in such sense that the diminution or taking away thereof by the competent power can be considered as depriving him of his property.

The decisions bringing remedies, to a certain extent, within the operation of the Federal prohibition of laws impairing the obligations of contracts by no means recognize any right of property therein, but rest upon the very different principle laid down in the leading case of Ogden vs. Saunders, 12 Wheaton, 213, that "parties must be understood as making their contracts with reference to existing laws, and im-
132 pliedly assenting that such contracts are to be construed, governed, and controlled by such laws."

We have thus carefully examined every ground upon which the relators herein can possibly claim that their right to the remedy herein invoked is protected from the operation of the adverse provision of the State constitution.

We shall always be found ready to yield, and to enforce obedience to the requirements of the Federal Constitution; but, where those requirements are not violated, we must, as mandatories of the State, recognize her constitution as our sole procuration, defining and limiting our powers; and we can neither do, nor direct to be done, nor permit to be done, anything in violation of the provisions thereof.

It is, perhaps, superfluous to say that the rights of contract creditors will be passed upon only when presented for our adjudication.

It is, therefore, ordered, adjudged and decreed that the judgment herein appealed from be reversed, and that the mandamus prayed for be denied, relators paying costs of the lower court and of this appeal.

Final decree.—Extract from the minutes.

MONDAY, *May* 17*th*, 1880.

Supreme court of the State of Louisiana.

133 The court was duly opened. Present their honors, Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

STATE, EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

On appeal from the third district court for the parish of Orleans, it is ordered, adjudged, and decreed that the judgment herein appealed from be reversed, and that the mandamus prayed for be denied, relators paying costs of the lower court and of this appeal.

Petition for writ of error.—Filed May 27*th*, 1880.

Supreme court of the State of Louisiana.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

To the honorable the supreme court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Folsom Brothers, a firm composed of George Folsom and Henry Folsom, with respect represents:

That petitioners are advised and believe that there is manifest error to their prejudice, on the final judgment rendered against them
134 by your honorable court in the suit of the State of Louisiana, on the relation of Folsom Brothers, vs. The Mayor & Administrators, No. 7447 on the docket, on the 17th day of May, 1880, and they irreparably are injured thereby, and petitioners desire to remove said *court* by writ of error into the Supreme Court of the United States, and they have prepared and tender herewith a bond with solvent security.

Wherefore petitioners pray that an order be granted allowing a writ of error, and that the proper citations be signed according to law and for general relief.

(Signed) ROBERT MOTT &
THOS. I. SEMMES,
Att'ys of Plaintiffs.

Order.

Writ of error allowed. Bond for one thousand dollars approved.
New Orleans, May 27th, 1880.

(Signed) E. BERMUDEZ,
Chief Justice La.

Bond for writ of error.—Filed May 27th, 1880.

Supreme court of the State of Louisiana.

STATE OF LA., EX REL. FOLSOM BROTHERS,
vs.
MAYOR & ADMINISTRATORS OF THE CITY OF New Orleans. } No. 7447.

Know all men by these presents, that we, the State of Louis-
135 iana, on the relation of Folsom Brothers, as principals, and Albert Baldwin as surety, are held and firmly bound unto I. W. Patton the mayor, and the following administrators of the city of New Orleans, viz, A. H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; J. Henry Behan, administrator of commerce; E. R. Chevalley, administrator of water-works & public buildings; Washington Marks, administrator of assessments; Joseph Collins, administrator of improvements; and P. Mealey, administrator of police, in the full and just sum of one thousand dollars, to be paid to the said Patton, mayor, and the said Isaacson, Glynn, Behan, Chevalley, Marks, Collins, and Mealey, administrators of the city of New Orleans, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 27th day of May, in the year of our Lord one thousand eight hundred and eighty.

Whereas, lately at a supreme court of the State of Louisiana, in a suit depending in said court, wherein the State of Louisiana, on the relation of Folsom Brothers, is plaintiff, and the mayor & administrators of the city of New Orleans, is defendant, judgment was rendered against the said State of Louisiana, on the relation of Folsom Brothers; and the said State of Louisiana, on the relation of Folsom Brothers, hav-
136 ing obtained a writ of error, and filed a copy thereof in the clerk's office of the said Supreme Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Patton, mayor, and to said Isaacson, Glynn, Behan, Chevalley, Marks, Collins, and Mealey, administrators of the city of New Orleans, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the 2nd Monday of October next:

Now the condition of the above obligation is such, that if the said State of Louisiana, on the relation of Folsom Brothers, shall prosecute said writ to effect, and answer all damages and costs if they fail to make their plea good then the above obligation to be void, else to remain in full force and virtue.

(Signed) STATE OF LA. ON THE RELATION OF FOLSOM BROTHERS. [L. S.]

(Signed) A. BALDWIN. [L. S.]

Approved.

(Signed) E. BERMUDEZ,
Chief Justice of Supreme Court of Louisiana.

Writ of error.—Filed May 27th, 1880.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition
137 of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law & equity of the said State in which a decision could be had in said suit between the State of Louisiana on the relation of Folsom Brothers, a firm composed of George Folsom and Henry Folsom, and the mayor & administrators of the city of New Orleans, wherein was drawn in question the validity, the constitution and statutes of the State of Louisiana, on the ground of the same being repugnant to the Constitution and laws of the United States, and the decision was in favor of the validity of the constitution and statutes of said State, and wherein a right was claimed under the Constitution of the United States, and the decision was against the right specially claimed or set up under such Constitution of the United States, a manifest error hath happened, to the great damage of the said State of Louisiana, on the relation of Folsom Brothers, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the
138 same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 27th day of May, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Endorsed:) Supreme court of the State of Louisiana. The State of Louisiana on the relation of Folsom Brothers, app'ts vs. The Mayor & Administrators of the City of New Orleans, app'ees. Writ of error. Copy of writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 27th day of May, one thousand eight hundred and eighty. (Signed) Robert Mott, att'y of plaintiff in error. Filed May 27th, 1880. (Signed) Frank Wall, d'y clerk.

139 *Certificate.*

STATE OF LOUISIANA.

Supreme court of the State of Louisiana.

I, George W. Dupré, clerk of the supreme court of the State of Loui-

isiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing one hundred and thirty-eight pages contain a full, true and complete copy of the transcript of the proceedings had in the third district court for the parish of Orleans, in a certain suit wherein The State of Louisiana on the relation of Folsom Brothers was plaintiff, and The Mayor and Administrators of the city of New Orleans were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said defendants, which appeal is now on the files thereof under No. 7447.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this twelfth day of June, one thousand eight hundred and eighty, and in the one hundred and fourth year of the Independence of the United States of America.

[SEAL.] GEORGE W. DUPRÉ, *Clerk.*

140 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Isaac W. Patten, the mayor, and to the following administrators of the city of New Orleans, viz, Alfred H. Isaacson, administrator of finance; John Glynn, jr., administrator of accounts; J. Henry Behan, administrator of commerce; E. R. Chevally, administrator of water-works and public improvements; Washington Marks, administrator of assessments; Joseph Collins, administrator of improvements and P. Mealy, administrator of police, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein The State of Louisiana on the relation of Folsom Brothers, a firm composed of George Folsom and Henry Folsom, plaintiff, and the mayor and administrators of the city of New Orleans are defendants in error, to show cause, if any there be, why the judgment rendered against the said State of Louisiana on the relation of Folsom Brothers, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Edward Bermudez, chief justice of the supreme court of the State of Louisiana, this 27th day of May, in the year of our Lord one thousand eight hundred and eighty.

E. BERMUDEZ,
Chief Justice, La.

Marshal's return.

141 Received June 1, 1880, by the U. S. marshal, and on same day, month, and year I served a copy of the within writ of error on the within named defendants in error, to wit, J. W. Patton, mayor of the city of New Orleans; Alfred H. Isaacson, administrator of finance for the city of New Orleans; John Glynn, jr., administrator of accounts for the city of New Orleans; Joseph Collins, administrator of improvements for the city of New Orleans; Washington Marks, administrator of assessments for the city of New Orleans; J. Henry Behan, administrator of commerce for the city of New Orleans; E. R. Chevally, administrator of water works and public buildings for the city of New Orleans, and Pat. Meallie, administrator of police for the city of New Or-

leans, by delivering to each a copy hereof in person in said city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Personally appeared before me, E. S. Curry, a deputy U. S. Mars al in and for the district of Louisiana, and makes oath that he served a true copy of the within writ of error on the defendants in error herein named, as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Subscribed and sworn before me, June 12, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

(Indorsed:) Citation. Service accepted for the defendants.
N. O., May 31st, 1880.

E. HOWARD McCALEB,
City Attorney.

(Indorsement on cover:) No. 810. The State of Louisiana ex rel. Folsom Brothers, a firm composed of George Folsom and Henry Folsom, pl'ffs in error, vs. The Mayor and Administrators of the city of New Orleans. Louisiana supreme court. Filed 10th July, 1880.

109-280

109-285.

OFFICE SUPREME COURT U.S.
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JEREMIAH MAHONEY, CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880.

No. ~~810.~~ 34

THE STATE OF LOUISIANA EX REL. FOLSOM BROS., A FIRM COMPOSED OF GEORGE FOLSOM AND HENRY FOLSOM, PLAINTIFFS IN ERROR,

versus

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

THOS. J. SEMMES,
Of Counsel for Plaintiffs in Error.

A W Hyatt, Print, 73 Camp St, N O—17,880.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880.

No. 810.

THE STATE OF LOUISIANA EX REL. FOLSOM BROS., A FIRM COMPOSED OF GEORGE FOLSOM AND HENRY FOLSOM, PLAINTIFFS IN ERROR,

versus

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

In May, 1873, a political mob broke into the gun stores of the plaintiffs in error, and carried off or destroyed arms and ammunition, the property of the plaintiffs, the value of which was fixed by final decree in the Supreme Court of Louisiana at $26,858, for which sum, with interest at five per cent., from 16th May, 1873, the date of the loss, the said Supreme Court rendered judgment against the City of New Orleans on 18 December, 1876. R. p. 48.

On the trial of the case in the Court below (the then Superior District Court for the Parish of Orleans), the jury rendered a verdict in favor of plaintiffs for $15,000, and on 9th April, 1874, judgment was rendered against the City of New Orleans for said sum of $15,000.

The plaintiffs, not being satisfied with the verdict, appealed to the Supreme Court of Louisiana, which Court on 18th December, 1876, raised the judgment to $26,858. This decree was entered in the lower Court 28th June, 1877. p. 49.

Guilfoux & Lee, gunsmiths, also recovered judgment against the City of New Orleans for $2000, loss occasioned by the mob

of May, 1873. This judgment became final 3d July, 1874. R. p. 12.

The plaintiffs in error are the assignees of this last mentioned judgment.

The judgments thus recovered against the City of New Orleans, were based on the obligation created by Section 2433 of the Revised Statutes of 1870, viz: "The different municipal corpora-" tions in this State shall be liable for the damages done to " property by mobs or riotious assemblages in their respective " limits."

The judgments above mentioned were registered in the office of the Administrator of Public Accounts, in accordance with the provisions of Act No. 5, Extra Session of 1870. The judgment of Folsom Brothers was registered on 15th July, 1877; that of Guilfoux & Lee, on 15th January, 1876.

The Act No. 5, of 1870, provides in its second section, that no writ of *fieri facias* or execution shall issue from any of the Courts of the State to enforce payment of any judgment for money against the City of New Orleans, but that such judgment shall be registered in the office of the Controller of the City, to be paid by the Treasurer, "provided there be sufficient money in " the Treasury to pay such judgment, specially designated and set " apart for that purpose, in the annual budget or detailed state-" ment of items of liability and expenditure required to be " made," by Section 124, of the Act of 1856, amending the City Charter of 1852.

Section three of the act provides, that in case the amount specially designated in the budget for the payment of judgments be exhausted, "the Common Council shall have power, *if they* " *deem it proper*, to appropriate from the money set apart in " the budget or annual estimate for contingent expenses, a suffi-" cient sum of money to pay said judgments, but if no such ap-" propriation be made by the Common Council, then all judg-" ments shall be paid in the order in which they shall be filed

" and registered in the office of the Controller, from the first " money *next annually set apart for that purpose.*"

The Supreme Court of Louisiana has interpreted the Act of 1870 in the case of State ex rel. Carondelet Company vs. Mayor of New Orleans, 30 La. Annual R. 131. The Court in that case say :

" By section 124 of the act approved March 20th, 1856, it was " the duty of the City government to provide in the annual " budget for all the matured debts and obligations of the city ; " and the adoption of the budget was to be considered the ap- " propriation of the amount for the purposes therein stated. " This section of the Act of 1856 is specially referred to and re- " cognized as being still in force in the second section of the " Act No. 5 of 1870. It was therefore the plain duty of the " Mayor and Administrators to have provided in the next annual " budget, after February 4th, 1875, for the payment of this judg- " ment, registered at that date, and all the other then unpaid " registered judgments. This plain duty they have failed to per- " form, although more than fifteen months had elapsed after the " registry of relators' judgment before the suit was brought.

" The City is not required to levy a special tax to pay regis- " tered judgments other than the levy made annually for all " purposes ; and a resort to the contingent fund is discretionary, " not compulsory. It is the duty of the City, in making up the " annual budget, to designate and set apart an amount sufficient " to pay all the registered judgments, and to pay them in their " order out of the money so set apart.

" This duty of the City does not depend on the amount of the " judgments rendered, but on the fact of the registry. A suffi- " cient amount must be provided, set apart ; and if a sufficient " sum should not be realized out of such appropriation, in the " annual budget next succeeding the registry, to pay all the " registered judgments, such as are not paid, must figure, of " course, in the next annual budget ; and so on until they are " all paid according to their respective priorities."

The plaintiffs in error, accepting this construction of the Act of 1870, on 21st February, 1878, applied to the Sixth District Court for the Parish of Orleans, for a writ of mandamus to compel the payment of their judgments. (R. p. 34).

The City replied that there was no money in the treasury, to the credit of the judgments of the plaintiffs' in error, and no money was collected or appropriated for the purpose; that without estimating the judgment for park tax, there was an amount of over $264,000 due on judgments registered prior to those of the plaintiffs' in error, etc., p. 39.

This suit was not pressed, but on 30th November, 1878, the plaintiffs' in error applied for a mandamus against the City, to the Third District Court for the Parish of Orleans, p. 41.

This petition alleges, that the City officers have refused to pay the judgments of the relators in whole or in part, and that the Council, in making up the budget of expenses for the year 1879, had refused to estimate and provide for the payment of said judgments.

The petition concludes with a prayer that the City officers be commanded to place on the budget of 1879, "and all succeeding "years, until the same be fully paid, all the judgments, including "those of relators, which have been registered according to law, "*in addition* to the other taxes to be levied according to law, and "thus provide and collect a fund to pay and satisfy the whole "of said registered judgments," etc. pp. 41-2.

The City replied, that "the revenues of each year, of the "City of New Orleans, are devoted by Section 3, Act No 30 of "the Extra Session of 1879, to the payment of the expenditures "of that year, and that it is *only such surplus as may remain after* "*the payment of the expenses* of any year that can be legally appro-"priated to the payment of the indebtedness of any former year; "that inasmuch as the taxing power of the City is limited to "one and one-half per cent., the anticipated revenues of the said "City, for the year 1879, from all sources, will not be more than

" sufficient to pay the necessary current expenses for the year " 1879, and that no surplus will remain, which can be applied " to the extinguishment of relators' judgments," etc.

The answer further states, that the City has no surplus fund from any source, and that the assessed value of taxable property in New Orleans for the year 1879, and for two years thereafter, is only one hundred and eleven million dollars; that the debt of the City exceeds twenty-one million dollars, and that a tax of one and one-half per cent., the limit allowed by law, will hardly be sufficient to enable her to perform the necessary functions of government; and that registered judgments against the City, to be paid in preference to relators, exceed $500,000.

This suit was discontinued 11th December, 1878, but the plaintiffs in error, on 16th December, 1878, applied again to the Third District Court for a writ of mandamus, and it is this suit which is now befor the Court.

The petition sets forth, that it is the duty of the City officers to place on the budget of taxes to be levied for the year 1879, *all the judgments* against the City, registered according to law; that in fact the whole of said judgments were not placed on the budget, and for those so placed taxes were not levied for the purpose of paying the same, according to their priorty, and said judgments were only partially placed on the budget, and when money was collected it was diverted to other purposes.

That the City had refused to place all said judgments on the budget for 1879, and that relators were entitled to a mandamus to compel the officers of the City to place upon the budget of 1879 all registered judgments, and to provide for their payment by a levy of taxes in addition to all other taxes required for other expenses.

The answer in this case reiterates the defenses set up in previous suits in the same Court, viz: the limitation of the power of taxation to one and one-half per cent. on the taxable property of the City, which amounted to only $111,000,000; that the reve-

nues of the year 1879 would be insufficient to pay the necessary expenses of the City government; and that the City had no other sources of revenue. pp. 5 and 6.

The Judge of the Third District Court considered that the obligations which the relators sought to enforce originated in 1873, and that the Legislature could not, in 1876, diminish the power to tax for payment of antecedent obligations, to the prejudice of those obligations, and as the City was, in 1873, vested with power to impose taxes to the extent of $1 75 on every $100, he ordered taxes to that extent to be levied, in order to pay all the registered judgments, including those of the relators. p. 33.

This judgment was reversed by the Supreme Court of Louisiana on the following grounds:

1. The limitation of taxation to one and one-half per cent., by Act No. 31 of 1876, is valid as against the obligations of the relators.

2. The Constitutional Convention of 1879, by article 209, had further restricted the power of the City to impose taxes. That article is as follows:

"No parish or municipal tax for all purposes whatever shall "exceed ten mills on the dollar of valuation."

Therefore, no Court in Louisiana, could order the imposition of a tax exceeding ten mills on the dollar, for the purpose of paying a judgment rendered against the City for damages done by a mob, in 1873, although the obligation to pay originated in 1873, and the judgment was recovered in 1874.

The relators in vain appealed to the Constitution of the United States to protect their vested rights.

The Supreme Court of Louisiana held, that the right to re-imbursement for damages occasioned by a mob was no contract, and, therefore, the restrictive legislation did not offend that clause of the Constitution of the United States prohibiting a State from passing a law which impairs the obligation of contracts; nor was such restrictive legislation avoided by the four-

teenth amendment, which forbids a State "to deprive any person of life, liberty, or "property without due process of law."

It is the correctness of this decision the Court is called on to review.

The plaintiffs in error assign Errors—

1st. The Supreme Court of Louisiana erred in reversing the judgment of the Third District Court, which held that the limitation of taxation to one and one-half per cent., imposed by Act No. 31 of 1876, did not deprive the City of the power conferred by the Act of 1870 to levy taxes to the extent of $1.75 on every one hundred dollars of assessed value, to pay claims originating in 1873, reduced to judgments in 1874.

2d. The Supreme Court of Louisiana erred in holding that the constitutional limitation of taxation to one per cent., enacted in the Constitution of 1879, deprived the City of similar power. The plaintiffs in error contend that the limitations of the Act of 1876, and of the Constitution of 1879, could not be enforced as against antecedent obligations, without disregarding the fourteenth amendment of the Constitution of the United States.

It will be observed that the judgment of the Third District Court for the Parish of Orleans, granting a peremptory mandamus in accordance with the petition of the plaintiffs in error, was rendered on 31st January, 1879.

The Constitutional Convention did not convene until April, nor was the new Constitution submitted to a vote of the people until November, 1879, nor did it take effect until 1st January, 1880.

The Supreme Court, therefore, by its decision made in May, 1880, reversed the judgment of the lower Court, on the strength of a Constitutional enactment passed after the rendition of that judgment.

The limitation of taxation to one and one-half per cent., contained in Act No. 31 of 1876, was not the foundation of the decree of the Supreme Court of Louisiana, although it is invoked by

the City of New Orleans, in its answer filed in the Third District Court.

The principle announced by the Supreme Court of Louisiana goes to this extent; that the right to reimbursement for damages occasioned by a mob, conferred by the State of Louisiana, is not a contract, and, therefore, after that right has accrued, and even after it has been judicially recognized and the amount of damage escertained and fixed by a judgment, the State is at liberty to render the right and the judgment inoperative and ineffective, by withdrawing the power of taxation from the corporation on which the obligation to reimburse was imposed.

If the State, in such case, can, by subsequent legislation, limit the power to levy taxes, it may, of course, withdraw it altogether, or forbid its exercise for the purpose of paying judgments on claims arising out of the statutory obligation.

As to the limitation on taxation, contained in Act No. 31 of 1876, there are some objections peculiar to that Act to which I propose to call the attention of the Court.

The Act of 1876 is tainted with the most unblushing repudiation of good faith. It contains, and was intended to create, a contract between the State, which enacted the law, the person who might accept the bonds authorized to be issued, and the tax payer.

That Act, in its preamble, admits that the City of New Orleans is in a condition of bankruptcy; it declares that the bonded and floating debt of the City exceeds $23,000,000; that the taxable property has become so reduced in value as to require taxation at the rate of at least five per cent. per annum to liquidate the debt; that such exorbitant rate of taxation renders its collection impossible, and would lead to a further destruction of the assess able property of the City, and ultimate practical bankruptcy.

This declaration is accompanied by an assertion, that the City has adopted a plan of liquidation looking to the payment of its creditors, "obtaining *thereby* the *necessary indulgence* for the pub-"lic well-being, and the maintenance of the public honor."

The plan proposed, as contained in the act, was an exchange of outstanding bonds for premium bonds; these premium bonds are of the denomination of $20 each, bearing five per cent. interest from September 1st, 1875, payable at no specified date; the interest not to be paid separately from the principal, and the maturity of the bond, principal and interest, to be determined by chance in the drawing of a lottery. Under this arrangement the City was not required to pay the principal or interest of its debt, except that portion which was drawn from the lottery wheel each year, and therefore, whether a creditor would be paid in one or fifty years, depended on the turn of the wheel and the drawing of a lucky number. This plan manifestly postponed the payment of all interest on all outstanding bonds, as well as the principal, in disregard of the terms of the various statutes under which they were issued. Fearing the holders of outstanding bonds would not accept the beneficent provisions of the premium bond plan, the Act of 1876 applied a *little coercion* to enforce the acceptance of the scheme.

The seventh section repeals all laws providing for the levy and collection of taxes to pay the *principal or interest of any other bonds* than premium bonds, and deprives the Courts of jurisdiction to enforce the payment of any such taxes.

Not satisfied with the provisions of section seven, just mentioned, the act contains a contract by which it is agreed, that only a tax of one and one-half per cent. per annum shall be levied, and the proceeds shall be applied only to payment of the premium bonds, and the necessary expenses of the City government, and after the year 1881, the said tax of one and one-half per cent. shall be divided between the City and the premium bondholders as follows: one per cent. for City expenses, and one-half of one per cent. for premium bonds. The act further declares that the taxable power of the City shall be limited to one and one-half per cent., and that said "limitation of the taxa-" ble power of the corporation is hereby declared to be a con-" tract, not only with the holder of said premium bonds, but

"also with all residents and taxpayers of said City, so as to "authorize any holder of said premium bonds, resident or tax-"payer, to legally object to any rate of taxation in excess of the "rate herein limited." Section 6.

In the 15th Section, this idea is thus enforced: "That this act "in all its *provisions and limitations* shall be held a contract "between the City of New Orleans and the holders of said "premium bonds and the taxpayers or residents of said City, so "as to authorize any of the contracting parties to resist any and "all contracting of debt by the said City, or *increase* of taxation "above the rate limited in the previous provisions of this act."

This act contains an express contract by which taxation is limited to one and one-half per cent., and the whole tax is appropriated to premium bonds and ordinary governmental expenses, thereby excluding and repudiating all other obligations; and this contract is made in the face of the declaration contained in the preamble of the statute, that a tax of five per cent. per annum is really necessary to provide for the City debt. Is not this a contract to invite and encourage taxpayers and premium-bond holders to resist the levy and collection of taxes to pay any other bond or obligation than premium bonds? Can validity be predicated of such a contract, or an act of the State Legislature creating such a contract, in the face of the Constitution of the United States?

Suppose an individual should undertake to dictate terms to his creditors in the manner proposed in this act; suppose an assignment to creditors, made on such conditions—would not the arrangement be denounced as a fraudulent device to hinder and delay creditors?

4 Ala. N. S., 374.
11 Wend. 201.
6 N. York, 517.
10 N. York, 593.
7 La. An. 270.
13 La. R. 457.

The taxing power of a corporation is a trust for the benefit of creditors, and must be applied like other property to the payment of its debts; a bargain, therefore, by which it is agreed to divert that fund from one class of creditors and give it exclusively to another class, is corrupt and void.

Sibley vs. City of Mobile, 3 Woods, 539.

In Craig vs. State of Missouri, 4 Pet. 436, a contract for the loan of bills of credit, emitted by the State of Missouri, was declared void because the emission of such bills of credit was prohibited by the Federal Constitution, and the contract in question tended to encourage an act prohibited by the supreme law.

A contract to do an act contrary to the public law of the country is void.

73 E. C. L. 811.

83 E. C. L. 630.

An agreement in fraud of the law, or made to injure another is unlawful, and cannot be enforced.

1 Common Pleas Div. 265.

1 Queen's Bench Div. 679.

Law R. 10 Q. B. 490.

2 Black. 585.

"A prohibition to pass a law impairing the obligation of a "contract, equally prohibits a State from enforcing a law of that "character."

Williams vs. Buff, 96 U. S. 184.

If there were no Federal constitution, a State could not, as such, enact a law of which illegality or immorality could be predicated, provided the State constitution interposed no barrier to the competency of the Legislature to make the enactment.

But if the Federal Constitution prohibits (as it does) a State Legislature from passing a law impairing the obligation of contracts, the law is void, and *any contract or agreement* made by the State, or any one else, which is based on and contemplates a non-fulfillment of the constitutional duty, to faithfully observe honest engagements, is void because it is *constitutionally immoral.*

"The inviolability of contracts and the duty of performing "them, as made, are the foundations of all well ordered society, "and to prevent the removal or disturbance of those foundations, "was one of the great objects for which the constitution was "framed.

Murray vs. Charleston, 96 U. S. 449.

An unlawful contract, having no effect, its illegality can be alleged by any person having an interest, even by the parties themselves, nor can it be ratified.

Coppel vs. Hall, 7 Wallace, 542.

20 Wallace, 496.

24 Demolombe, No. 380.

The whole Act of 1876 is, for the reasons stated, void, and is therefore to be disregarded as imposing any limitation on the taxing power of the City of New Orleans.

Therefore, in 1876 the taxing power of the City was either regulated by section 19 of Act No. 7, extra session 1870, p. 30, or by section 15 Act No. 73 of 1872, p. 127.

The Act of 1870 fixes the limit at one dollar and seventy-five cents on every one hundred dollars of assessed value, for all purposes.

But the Act of 1872 provides: "That the Council, after the "adoption of the estimate, shall proceed to levy the annual "taxes required, to-wit:

"1. The City debt tax, which shall be based upon the detailed "estimate of the sinking funds and interest falling due. For all "bonds, for which no other retiring provision exists by law, an "estimate shall be included, of not less than two nor more than "ten per cent. of the face of the bonds outstanding, of any of the "several issues, which shall be applied to the retiring of bonds "offered at the most advantageous rates, no bid to be accepted "higher than par, and the right reserved to reject all bids. *No "limit*, other than herein laid down, shall apply to this tax, "which is hereby declared a vested right of the bondholders "interested.

" 2. A tax for current expenses, including police and exclusive " of interest. This tax shall in no year exceed one and a quarter " per cent. upon the assessed value of real, personal and mixed " property."

If we are to accept as true the declaration contained in the preamble of the Act of 1876, the interest and sinking fund taxes, authorized by the foregoing section, amounted to five per cent. per annum; this, with the current expense tax of one and one-quarter per cent., raised the taxing power of the City to six and one-quarter per cent.

At all events, the interest tax was separated from the current expense tax, and, therefore, there was a taxing power of one and one-quarter per cent., to be applied to other purposes than the bonded debt. It is manifest the Act of 1872 largely increased the taxing power conferred by the Act of 1870.

Such was the taxing power of the City of New Orleans in 1873, when the mob occurred and the claims against the City originated, and such was its taxing power when judgments were rendered in 1874.

It is manifest, therefore, that the Act of 1876, if enforced, utterly annihilates the right of the relators to reimbursement for the losses sustained by them. If the Constitutional limitation of taxation to one per cent. per annum, as fixed by Article 110 of the Constitution of 1879, is to be accepted as the extent of the power of the City to levy taxes to pay antecedent obligations, the judgments of the relators are reduced to ashes. Is it possible that such a disregard of all principles of justice will be sanctioned by this Court?

The Supreme Court of Louisiana says to the relators, your judgments represent claims for damages, not contracts; the Constitution of the United States forbids the State from impairing the obligation of contracts, but the State may repudiate judgments recovered against the City, or confiscate such judgments, by withdrawing its taxable power, unless such judgments are based

on contracts entered into when the taxable power existed. Can this be law? The answer is to be found in the language of this Court, uttered in the case of Memphis vs. United States, 97 U. S. 295.

"But it is not so clear, that when a new remedy is authorized "*after* a contract has been made, that remedy may not be wholly "taken away by the Legislature before any vested rights have "been acquired under it. In such a case, the parties did not "contract with reference to it, and it did not enter into their "agreement. It is, however, no less true that *vested rights* may "be acquired by the creditor under it, and by virtue of it, and "when such rights have been acquired, they are beyond the "reach of the Legislature, and the repeal of the law will not "affect them. As to them the law continues in force, notwith-"standing its repeal. In this case the relator recovered his "judgment against the City on 16th March, 1865. Into that "judgment his contract was merged, and it no longer had an legal "existence. If, as asserted by Blackstone, the judgment was "itself a contract, the remedies for its enforcement, existing at "the time when it was recovered, could not be taken away, "either by direct legislation, or indirectly by repealing the law "which gave those remedies. And if *the judgment may not be "considered a contract of record, still the vested rights it gave to the "relator, whatever they were, are equally secure against legislative "invasion.*"

Again, the same case, "we do not deny that it is competent for "a Legislature to repeal an act which, when it passed, was a "*mere gratuity, if, while it was* in existence, no vested rights have "been acquired under it or in virtue of it." *Id* p. 297.

Again, p. 298. "If the repealing act affected that proceed-"ing, or took away the right the relator had in force of his "judgment, it was retrospective in its operation, and was, there-"fore, prohibited by the Constitution," of the State. The Constitution of Louisiana, in force when the Act of 1876 was passed, prohibits retrospective laws. Act 110, of the Constitution of

1868, declares that, "no expost facto or retroactive law, nor any "law impairing the obligation of contracts, shall be passed; nor "vested rights be divested, unless for purposes of public utility "and for adequate compensation made."

This article is retained in the Constitution of 1879, as Article 155; the language of the two articles is identical, except that in the Constitution of 1879, the word "previously" is inserted after the word "compensation."

The condition of the finances of the City of New Orleans, as disclosed in the record, and the effect of the hostile legislation of the State on the claims of the relators, are described in the opinion of the learned Judge of the Third District Court. "The evidence further shows that, including the judgments registered in favor of relators upon 15th July, 1877, there are still unpaid judgments registered up to that date, which amount in the aggregate, with interest and costs estimated, to the round sum of $290,000. The amount registered since the 15th July, is not shown.

"The estimated receipts for the year 1879, as shown by the budget offered in evidence, from all sources amount to $1,959,630.

"The estimated expenditures, as shown by the testimony of the Administrator of Accounts, and by the projet of the Budget of Expenditures, adopted by the Council in Committee of the Whole, exactly covers the estimated receipts."

"In the last mentioned budget or projet there is an item of $10,000 00 for judgments, and another item of $2190 00 for contingent."

"It requires no profound mathematician to demonstrate that, with judgments registered and unpaid up to the 15th July, 1877, amounting to $290,000 00, aside from those which have been registered since that date, an annual appropriation of $10,000 00 will make very little impression upon the judgment debt of the City."

"Taking the principal of this debt at $242,929 37, as stated by the Respondents, and admitting the $48,000 00 estimated interest

and costs, it is evident that $10,000 00 per annum will fall something like $2100 00 short of paying interest on said debt at the legal rate of five per centum, so that instead of decreasing, the judgment debt will increase year by year, and the judgment in favor of relators being the last registered of the series which make up the amount referred to, cannot only never be paid, but, as if to carry him even beyond eternity, its prospects of payment becomes more remote with each succeeding year." p. 29.

The entire opinion of the Judge of the Third District Court is found in the Transcript, pp. 27–33. Full extracts from the statutes, referred to in this brief, are incorporated in the opinion.

If the reasonable expectations of the plaintiffs in error would be disappointed, under the limitation of one and one-half per cent. imposed on the taxing power of the City, by the Act of 1876, what hope of payment could they possibly entertain if the doctrine of the Supreme Court of the State is to be sustained, that the constitional limitation of one per cent. has still further reduced the taxing power to pay antecedent obligations similar to those belonging to the relators?

The Supreme Court of Louisiana answered our appeal to the fourteenth amendment of the Constitution of the United States, thus: "It is not necessary for us to refer to the many limitations " which were imposed by judicial interpretation upon the terms " 'vested rights,' even under those express provisions. The " fourteenth amendment, by i's very terms, refers only to 'prop- " erty,' and no vested rights can be included within that term, " by any stretch of interpretation, except 'vested rights' in and " to property. Giving to the word property its broadest signifi- " cation, so as to include everything susceptible of ownership, " movable or immovable, corporeal or incorporeal, it cannot pos- " sibly be extended to remedies given merely for the enforcement " of property rights. Still less can the power of taxation of a " municipal corporation be a subject of ownership by any indi- " vidual in such sense, that the diminution or taking away thereof " by the competent power, can be considered as depriving him " of his property."

The Court seems to concede, at least it does not deny, that the right of action to recover to the extent of losses sustained by a mob, conferred by the statute of Louisiana, is property, or a right of property, or a vested right in property. This proposition could not be denied. Such a right becomes more defined when reduced to judgment.

Wade, on Retroactive Laws, Section 172, says: "The right to "recover for personal or other injuries, resulting to one person "by the torts of another, cannot be tortured into rights arising "in contract. These, however, are so sacred as to be considered "worthy of protection. Thus, when an act of negligence pro- "duced a personal injury, for which the person suffering the "same was entitled by the existing law to recover the full "amount proved, it was held that a statute limiting the recovery "to a less sum would not affect the rights of the injured party. "He had a vested right, not only to compensation for his injuries, "but to the measure of damages fixed by the law, as it existed "when the cause of action accrued. The same principle is held "to govern the assessment of damages for injuries to private "property in the exercise of the right of eminent domain.

"Hence, when the Constitution of the State required compen- "sation to be made not only for property actually taken, but for "such as was damaged for public use, and there was a statute "requiring certain proceedings to be had for the purpose of "ascertaining the measure of damages in such cases, when the "City entered upon a public improvement, a person whose "property was damaged thereby had a right to have his damages "assessed under the existing law. A subsequent change of the "law was held insufficient to exonerate the City from the duty "imposed by the law when the damage was inflicted. And "when such damages have been assessed, the right to recover the "amount awarded becomes vested in the party whose property "has been taken, and is not lost by a repeal of the statute by "which the assessment was authorized, nor even by a positive "enactment."

The cases cited in support of the views expressed by the author are as follows:

Kentucky vs. Pennsylvania Railroad, 65 Pd. St. 269.
Elgin vs. Eaton, 83 Ill. 535.
Clayburg vs. Chicago, 25 Ill. 535.
People vs. McRoberts, 62 Ill. 38.
In re Townsend, 39 N. Y. 171.
People vs. Howe, 37 Barb. 440.
Taylor vs. Porter, 4 Hill, 140.
People vs. Westchester, 4 Barb. 64.

The views of the Supreme Court of Louisiana that there can be no ownership "in the remedies given merely for the enforcement of property rights," and, therefore, the withdrawal or substantial destruction of those remedies, cannot be said to amount to the divesting of vested rights, are not those of other Courts, nor can they be sustained. It is well settled, that where a change in the law of any State so far affects the remedy as to amount to a deprivation of the right, it will be held obnoxious to the objection that it deprives a person of property without due process of law.

Wade Retroactive Law, section 195.
Price vs. Hopkin, 13 Mich. 318.
Paschal vs. Perez, 7 Texas, 348 and 365.
West vs. Sansom, 44 Ga. 295.
Cordova vs. Galveston, 4 Texas, 470.
Scaine vs. Belleville, 39 N. J. L. 526.
Bank of State vs. Cooper, 2 Yerger, 599.

A change of the rules of evidence by which adverse possession might be established, has been adjudged void, so far as retrospective.

Proprietors of Kennebec vs. Labord, 2 Maine, 275.
Gaines vs. Kennedy, 53 Miss. 103.

The rights secured by a judgment are such as the law gives to the prevailing party when it is rendered. To materially enhance

or diminish those rights is to work a deprivation of the rights of one or other of the parties.

Kennebec vs. Labord, 2 Maine, 275.

DeChastellex vs. Fairchild, 15 Pa. St. 18.

To deprive a person of the only legal remedy he has by which to enforce his rights, is either to impair the obligation of a contract or to deprive him of property without due process of law.

Why is it that a substantial change of remedy is said to impair the obligation of a contract? "The remedy constitutes the essen- "tial part of the legal obligation of the contract, but the remedy "is not part of the contract itself, nor does the obligation of a "contract consist in any particular form of remedy. It is only "necessary that there should be an adequate subsisting remedy. "It is, therefore, believed to be competent for the Legislature to "change the remedy. If the remedy given be as good as that "which was taken away, the obligation of the contract is not "impaired." Starkey, C. J., in McMillan vs. Sprague, 4 How. (Miss.), 647.

In Edwards vs. Kearzy, 96 U. S. 600, this Court say: "The "obligation of a contract includes everything within its obliga- "tory scope. Among these elements nothing is more important "than the means of enforcement. This is the breath of its vital "existence. Without it, the contract as such, in the view of the "law, ceases to be and falls into the class of those imperfect "obligations, as they are termed, which depend for their fulfil- "ment upon the will and conscience of those upon whom they "rest. The ideas of right and remedy are inseparable. Want "of right and want of remedy are the same thing."

If this be the nature of the obligation of a "contract," is the "legal obligation" to make compensation for a tort, any differ- ent from the legal obligation to perform a contract.

Both obligations are of the same nature and have equal force,

only they spring from different sources. The civil law recognizes five sources of legal obligations, to-wit:

1. Contracts.
2. Quasi contracts.
3. Offences—intentional torts.
4. Quasi offences—injuries resulting from negligence.
5. Obligations imposed by law, such as the obligation to pay taxes, or in cities, the obligation to allow your neighbor to rest nine inches of a party wall on your land. The servitude established by Article 675, Civil Code Louisiana. The characteristics of a legal obligation are the same irrespective of the source from which it springs. Those characteristics are:

1. The *juris vinculum* by which the obligor can be sued in a Court of Justice, and compelled by the public force to execute his engagement.

2. The legal obligation creates a relation between one or more determinate persons and one or more other determinate persons, and hence, it is essentially individual and relative. This distinguishes a legal obligation from general duty to society. It is only those obligations existing between determinate persons, and the execution of which is guaranteed by the public force, which are properly civil or legal obligations.

It is therefore plain, that the means of enforcement constitute as much an element of a legal obligation in the case of tort as in the case of contract. A change of remedy, which in the case of contract is regarded an impairment of its legal obligation, would in case of tort amount to a divesting of vested rights, or a deprivation of property without due process of law, and therefore condemned by the fourteenth amendment of the Constitution.

Mr. Justice Field, in *ex parte Virginia*, speaking of that clause of the fourteenth amendment which declares that 'no State shall deprive any person of life, liberty or property without due process of law," says: "It exists in the Constitution of nearly all "the States, and is only an additional security against arbitrary

" deprivation of life, and liberty and arbitrary spoliation of " property. It means that neither can be taken or the enjoyment " thereof impaired, except in the course of the regular adminis- " tration of the law in the established tribunals." 100 U. S. " p. 366.

In the cases of Bartemeyer, 18 Wallace 129, and the Beer Co., 97 U. S. 33, the Court plainly intimates that even the police power of a State, could not be exercised so as to divest the owner of property actually in existence without due compensation. If the taxing power in cases of contract is a trust, which the donor cannot annul and which the donee is bound to execute, as was said in the City of Quincy case, 4 Wall, 535, it is also a trust to be exercised for the payment of any legal obligation, and when a person has a vested right in the performance of the obligation, the power cannot be withdrawn without violation of that vested right. In this sense, the power of taxation is susceptible of ownership, notwithstanding the opinion of the Supreme Court of Louisiana to the contrary.

The fact is, these limitations on taxation contained in Constitutions and organic laws are intended to apply to voluntary contracts or expenses, not to give license to criminal negligence or wilful misconduct. Such has been the construction placed on a limitation " that the Council shall not create or permit to accrue any debts or liabilities " exceeding $50,000 00.

This restrictive provision of the City Charter of San Francisco, was held to have no relation to liabilities arising *ex delicto* or to those which the law may cast on the corporation.

McCracken vs. San Francisco, 16 Cal. 591.

1 Dillon on Corp., Sec. 89.

The duty imposed by the Revised Statutes of Louisiana, on the cities of the State to make good losses sustained by mobs, is a general duty, and carries along with it the general power to perform that duty by the unlimited levy of taxes.

Is the Act of 1876, or the Constitution of 1879, each with its

limitation, rendering the performance of the duty impossible, to be regarded as a repeal of the Section of the Revised Statutes creating the liability?

I think the Court will hesitate before accepting such conclusion.

I file with my brief a printed pamphlet containing Act No. 31 of 1876, in extenso, and the premium bond plan and ordinances referred to in the Act of 1876, and by such reference are a part of said act as was held in the case of Moore vs. City of New Orleans, decided in May 1880, 32 La. An. 735.

Respectfully submitted,

THOS. J. SEMMES,

Of Counsel for Plaintiffs in Error.

APPENDIX.

Act No. 5, of 1870.

Section 2d. *Be it further enacted, etc.*, That hereafter no writ of execution or *fieri facias* shall issue from any of the Courts of this State against the City of New Orleans to enforce the payment of any judgment for money against the City of New Orleans, but final judgment against the City of New Orleans, condemning said corporation to pay any sum in money, when the same shall have become executory, shall have the effect in law of establishing and fixing the amount of the plaintiff's demand against said corporation, and the plaintiff may cause a certified copy of said judgment, together with a copy of the plaintiff's petition, and the defendant's answer in the cause in which such judgment is rendered, together with the certificate of the clerk of said Court, that such judgment is final and executory, to be filed in the office of the Controller of said City, and it shall be the duty of the Controller, or auditing officer of said corporation, to receive the same and cause the same to be registered in his office, of the date on which the same shall have been presented, and when so registered, it shall be the duty of the Controller to warrant on the Treasurer or disbursing officer of the corporation for the amount thereof, without any special appropriation of money therefor by the Common Council; provided, always, that there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose, in the annual budget or detailed statement of items of liability and expenditure, required to be made by the one hundred and twenty-fourth section of the act of the Legislature, entitled, "An Act to consolidate the City of New Orleans, and to provide for the government of the City of New Orleans and the administration of the affairs thereof," approved March 20, 1856, or such laws as may be hereafter enacted relating thereto.

SECTION 3d. *Be it further enacted, etc.*, That in case the amount of money designated in the annual budget for the payment of judgments against the City of New Orleans, at the date when any judgment against the said corporation shall have become final and executory, shall have been exhausted, the Common Council shall have power, if they deem it proper, to appropriate from the money set apart in the budget or annual estimate for contingent expenses, a sufficient sum of money to pay said judgment or judgments, but if no such appropriation be made by the Common Council, then all judgments shall be paid, in the order in which they shall be filed and registered in the office of Controller, from the first money next annually set apart for that purpose.